DISCUSSION PAPER

89.B.1

INTERNATIONAL REFUGEE PRESSURES AND THE CANADIAN PUBLIC POLICY RESPONSE

by

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INTERNATIONAL REFUGEE PRESSURES

AND

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Preface

In recent weeks, two events have signalled a major reorientation of Canadian refugee policy. First, on January 1, 1989, a new refugee determination process came into effect. This will radically overhaul Canada's inland refugee determination system -- that is, the way Canada grants refugee status to asylum-seekers arriving at its borders -- and introduces new controls governing access of asylum-seekers to that system. The new process applies to individuals who claim refugee status on or after January 1, 1989.

Second, on December 28, 1988, Barbara McDougall, the Minister of Employment and Immigration, announced details of a system to handle the backlog of 85,000 refugee claimants who are already in Canada, awaiting determination of their status. This backlog clearance plan applies to those who made refugee claims prior to January 1, 1989.

The development of the new refugee determination system was the result of several years of discussion and active debate, as well as the subject of a number of special studies. Many aspects of the system have nonetheless been criticized by its opponents, including church groups, refugee organizations, and the opposition parties in Parliament. Indeed, the Canadian Council of Churches has already launched a court action challenging the new system. The Council argues that certain provisions conflict with the Canadian Charter of Rights and Freedoms by violating principles of fundamental justice; for example, not every claimant is allowed access to the full determination process -- a concern originally raised by the Senate in its deliberations on the bills that brought the new system into being. The deportation in January 1989 of the first claimants to have their claims rejected under the new procedures prompted renewed concern about whether these individuals had had a fair chance to present the full reasons for their claims and whether deportation would threaten their safety.

The backlog clearance plan involves assessing each claim on an individual basis, a process that the government estimates will be concluded by the end of 1990. Such a system astutely avoids the problems of an amnesty, which would appear to reward those who abuse the system. However, some critics have suggested that the approach chosen seems expensive and lengthy, especially for claimants who have already faced uncertainty for a protracted period; while others fear that the system may reward abusers with up to another two-year stay in Canada.

The challenges associated with both the new refugee determination system and the backlog clearance plan suggest that refugee policy will be a key issue in public debate over the coming months and years. Both the critics and the proponents of the new procedures will be carefully monitoring the effectiveness and fairness of the new policy.

The purpose of this discussion paper is to provide a broader context within which implementation of the new refugee policy can be monitored and evaluated. The paper analyzes the international and Canadian dimensions of the refugee problem, contains a full

discussion of the historical development of Canadian refugee policy, examines the nature of the debate regarding the present refugee determination system, and concludes with a series of recommendations for change.

It is the Institute's hope that, by issuing this discussion paper at this time, it will contribute to the debate about the nature of Canadian policy toward refugees and to the resolution of the problems raised by the issue of refugee determination.

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Summary

This discussion paper has two principal aims: to provide information upon which discussion of refugee policy can be based and to offer an informed critique of Canada's current refugee policy. To do this, the paper examines the international and Canadian dimensions of the problem, contains a full discussion of the development of Canadian refugee policy and the 1988 legislation, examines the problems posed by that legislation, and concludes with a series of recommendations for change.

To consider the international arena first, the report shows that the world population of refugees has now reached a total of between 12 and 14 million people. This total has been increasing in recent years, mainly because of large increases in Africa and the Middle East-South Asia region. Indeed, these two regions now account for 28 per cent and 47 per cent, respectively, of the world's refugee population and demonstrate clearly that refugees have become a Third World phenomenon. This situation is perhaps not surprising since the principal 'root causes' of refugee movements are considered to be economic underdevelopment and external aggression.

Faced with a problem of this scale, the countries affected have responded in a variety of ways, which the report summarizes under four broad headings (resettlement, financial assistance, international cooperation or deterrence), showing that although some countries have displayed remarkable generosity toward refugees, others have increasingly adopted the deterrence approach. The imposition of visa controls, the interception of ships, and the return of refugee claimants to 'safe third countries' have increasingly been used in Europe, South-East Asia and North America to cope with the spontaneous arrival of asylum-seekers.

Refugees -- that is individuals who have fled their country owing to a well-founded fear of persecution on the grounds of their race, religion, political opinion, nationality or membership of particular social groups -- have a series of rights guaranteed by the 1951 Convention Relating to the Status of Refugees, but those rights are being gradually diminished as states party to the Convention use 'grey areas' in international law to apply restrictive measures limiting their obligations toward asylum-seekers. Indeed, as this report indicates, Canada appears to be no exception in this regard.

In considering the Canadian context, the report outlines the principal features of the laws adopted in 1988, which radically altered the way Canada handles those arriving on its borders. These laws are designed to control access to a reformed refugee determination procedure and to deter the entry of fraudulent refugee claimants into Canada.

The paper then shows, by considering the evolution of Canada's refugee policy, how this legislation departs from previous policy and how it continues pre-existing approaches to the problem. Thus, it is noted that Canada avoided dealing effectively with the refugee issue until 1976 when it developed, for the first time, comprehensive domestic legislation to handle refugee admission. The Immigration Act of that year proved flawed, however, because it lacked an oral hearing for the claimant and its determination process was so long that backlogs of claimants began to occur. A Supreme Court decision in 1985 corrected the first problem but exacerbated the delays in the process, while a series of reports from

parliamentary committees and independent experts consistently argued the need for reform to create a more expeditious process.

The government responded by introducing a series of stop-gap measures between 1986 and 1987. Visa controls and faster processing methods were adopted, and an administrative review was introduced to reduce the backlog of refugee claimants. However, these were seen as insufficient, and in 1987 the government introduced Bills C-55 and C-84 to deal with the problem. The proposed legislation sparked a heated debate; as this report shows by examining Senate review of the bills, a central concern was that the government's attempt to speed up refugee determination by limiting access to the determination process was not the most appropriate solution to the problem.

Opinion concerning the government's overall policies toward refugees and the effects of the new legislation has been seriously divided. To analyse these views, the report presents the positions of both opponents and supporters of the government's approach.

Opponents have argued that Canada's pattern of refugee admission has stressed regions that are not major sources of refugees and has given relatively little attention to those regions that are responsible for 90 per cent of the world's refugees. (In 1986, 31 per cent of all refugees admitted into Canada were from Eastern Europe, whereas only 7 per cent were from Afghanistan and Ethiopia.) Noting that only 25 per cent of the 125,980 refugee and humanitarian admissions to Canada between 1982 and 1987 were Convention refugees, critics have also observed that the bulk of Canada's admissions under these programs are targeted to a limited range of countries and to specific individuals who meet a different range of criteria than those required of refugees. Others have pointed out that the 'successful establishment' criterion required of potential overseas refugee admissions has meant that only those with skills of value to the Canadian economy are chosen. (That 80 per cent of Canada's refugee entrants are men, whereas 75 to 80 per cent of the world's refugees are women and children, is taken as indicative of this problem.

In sum, critics have argued that an overall 'concept of control' has traditionally governed Canada's refugee admission policies, a concept designed to control the quality of those admitted, to ensure refugee selection overseas, and to prevent uncontrolled movement into Canada. These critics have gone on to suggest that the government, fearing its control was in jeopardy, manipulated public opinion to imply that the spontaneous arrival of refugee claimants on Canada's borders posed such a threat to the country's immigration system that new legislation was necessary; that new legislation, introduced as Bills C-55 and C-84, continues control by limiting access to determination -- without strictly violating international obligations -- using the 'grey areas' of international and domestic refugee law.

In response, defenders of the government position have observed that Canada's response to the needs of refugees has been generous, that legal developments prior to the 1988 legislation had produced a situation where Canada was unable to exert its sovereign right to control its borders and administer a sound immigration policy; and that the two new acts constituted an appropriate response to the need for reform. Thus, between 1947 and 1980 a total of 332,892 people were admitted to Canada under refugee and humanitarian programs; between 1981 and 1987, a further 140,869 individuals were admitted to this country under such programs; and by 1986 Canada's resettlement numbers were second only to those of the United States. Canada has also contributed large sums to international development (including $2.2 billion channelled through CIDA and $319 million to the United Nations and other international bodies in 1986-87) and has thus attacked one of the root causes of refugee flows. Canada's aggregate contribution to international relief is second only to that of the United States. Indeed, Canada's generosity toward refugees has been internationally recognized by the United Nations High Commissioner for Refugees in the

award of the Nansen Medal to Canada for "outstanding achievements attained in favour of refugees".

Supporters of the government's new legislation also argue that a rising tide of illegal migrants threatened to swamp the immigration system unless action was taken. Two observations -- that 70 per cent of the refugee claimants seeking asylum in Canada would eventually have their claims rejected by the determination process (often because they were 'economic migrants') and that 80 per cent of claimants came from a country that was not their own (and from which many were in no danger of persecution) -- were held to demonstrate that most claims were from illegal migrants. However, illegal or not, all claims had to be determined, posing an enormous burden for the determination system by creating an ever-increasing backlog of claims. Such a backlog, government supporters argued, damaged public support for the admission of refugees, placed a huge financial burden upon this country's resources (Quebec alone spent between $60 and $70 million for refugee claimants' welfare needs during 1986-1987), and resulted in such delays that it took between five and seven years to determine a refugee claim. Reform was obviously required, and the new legislation recognizes Canada's international and domestic obligations to refugees while getting back to the original intent of the 1976 legislation: the need to help those refugees who need protection.

The paper argues that these opposing views diverge principally over the goals of refugee policy (the desire to control versus the wish to admit much larger numbers of refugees) and the definition of who is a refugee (those who need protection or all those denied permanent solutions). Indeed, it is argued that the overriding challenge in resolving this conflict is to develop a determination system that will prevent abuse, and yet extend protection to all those who need it. To do this, it is necessary to find out who are the individuals of concern, and how to meet their needs in ways that are procedurally and legally fair to all concerned.

Whether the new laws are able to do this depends on the immediate consequences of their implementation -- that is, whether court challenges modify the legislation, whether the 'safe third country' return and 'interception of ships' provisions can be implemented effectively, how the backlog of claimants is dealt with, and whether underground or 'sanctuary' movements develop to circumvent the new restrictions.

Certainly, the new legislation must be seen as but one more step toward resolving the refugee problem, and the report concludes with a series of recommendations for further action. On the international stage, it is important for Canada to aid the attack on the root causes of refugee movements by increasing its role in international peace-keeping, increasing its financial contributions to economic development in the Third World, and demonstrating to other nations by its example that an enlightened and sensitive refugee policy is possible.

In the domestic arena, eight policy initiatives are outlined. First, it is suggested that Canada must devote more funds than it now does to its determination system so that refugee determination can be carried out as efficiently and fairly as possible. Second, pressure should be taken off the inland determination system by increasing overseas selection of refugees. Third, such pressure be further reduced by increasing overall immigration levels in the Family and Independent Classes. Fourth, amnesties should not be used to clear the backlog unless those who are refugees are clearly identified; otherwise such measures deny them necessary protection. Fifth, more effort should be expended on informing the public about the rights of refugees, Canada's obligations and the number of refugees Canada receives. Sixth, immigration and refugee matters should be conceptually and administratively separated, so that the rights of refugees are not obscured by the control of immigration. Seventh, the administration of all Canada's refugee programs should be taken out of the political sphere altogether and placed in the hands of a totally independent Refugee Commission. Finally,

Canada must have a refugee determination system but one that is accessible to all refugee claimants, for this is the only way to develop a process that is fair to all.

A fair refugee policy can be achieved only by reaching a sensitive balance between the rights of refugees, the rights of Canadians and Canada's international obligations. It is to be hoped that these recommendations will contribute to achieving this end.

Introduction

The introduction of two refugee bills in the Canadian House of Commons in 1987 caused an intense policy debate over Canada's approach to refugees, a debate that continued even after the bills were given royal assent on 21 July 1988. The debate has ranged far and wide, probing many aspects of the problem, but it has been plagued by ignorance and misinformation. Thus, data on the numbers and sources of refugees admitted to Canada rarely enter media discussion. The fact that the 174 Sikhs who arrived by boat represented a tiny proportion (0.8 per cent) of all refugees entering Canada in 1987 and an even smaller proportion (0.1 per cent) of all immigrants landed in that year was rarely mentioned in press coverage of the incident or the government's reaction to it. Canada's responsibilities in terms of its international obligations to determine the refugee status of asylum-seekers and not to return refugees to countries where they might be at risk appear to be dimly understood. Moreover, a recent study of public attitudes by the Canada Employment and Immigration Advisory Council suggests that Canadians are poorly informed about all questions relating to immigration and are "totally confused about the difference between a refugee and an immigrant" (Canada Employment and Immigration Advisory Council 1988, 6; *The Globe and Mail* 27 August 1988).

Certainly, the international context is rarely addressed in Canadian discussions of refugee policy. Thus, the public are assailed by the contradictory positions of advocacy groups claiming Canada does little to help refugees, people expressing the fear that the country will be swamped by refugees, and government agencies reminding people that Canada was awarded the Nansen medal for its efforts on behalf of refugees. Without a knowledge of the total world refugee population and its components it is hard to reconcile these positions. Information on the sources of refugees and the causes of their movement is essential to a careful evaluation of the effects of visa controls on various countries or the correct approach to tackling the root causes of refugee movements. It is also necessary to be aware of the refugee policies of other countries; without a sense of their actions it is impossible to gauge the extent to which Canada is acting in concert with an international tide of deterrence or to determine how harsh the Canadian proposals for refugee policy reform are.

Perhaps the most misinformed belief is that all who claim refugee status are abusing Canada's immigration system. In fact, as will be shown, refugees as a class of people are clearly defined under international law for the purposes of identifying those deserving international aid and protection. They are thus carefully differentiated from other types of migrant and are identified as individuals to whom the international community has specific obligations. Their arrival in a country may of necessity be by irregular means, but this does not deny them refugee status, and they are owed certain rights by the country in which they seek refuge.

Their existence as a class under international law has also meant that international agencies charged with administering aid to refugees have been able to define refugee populations where they occur across the globe, to suggest causes for refugee movements, and to estimate their total numbers with some confidence. There may well be 70 to 80 million people migrating for economic reasons ('economic migrants') in the world today, but observers agree that there are approximately 15 million refugees in need of aid and protection.

Canadian immigration law has also clearly recognized refugees as a distinct class deserving of Canadian protection and has sought to operationalize this by selecting refugees from overseas for resettlement in this country. For those who have been unable to follow this procedure and have fled to Canada before having their refugee status established, a full procedure existed since the 1976 in the Immigration Act to determine whether they are *bona fide* refugees. Thus, it must be noted that the refugee is a class known to both international and Canadian law and that mechanisms have been in existence for some time to ensure that only those deserving of such status are so assisted.

Undoubtedly, there are those who migrate for economic reasons and seek to abuse Canadian refugee law as a means of gaining admission to Canada (though it should be noted that abuse also occurs under other immigration categories). Moreover, it would be ingenuous to insist that all refugees can be easily classified. In fact, as argued later in this paper, because poverty is, or may be, a contributory cause of human rights abuse, many refugees will be migrating to better economic conditions.

However, to insist that all refugees are 'economic migrants' on such grounds is to fail to recognize that refugees exist as a separate class of persecuted individuals whom the international community is obliged to help; and to deny refugee claimants a chance to demonstrate their claim robs the individual of the protection such determination conveys.

Debate has continued without even a full understanding of Canada's existing refugee policy and its evolution. Thus, Canada's past as a traditional haven for refugees has been eulogized by many; but even a former Minister of State for Immigration called this image a "myth", noting that past actions have included the return of Jews to wartime Europe and the careful selection of only economically useful refugees from the camps of Southeast Asia (Weiner 1988). These aspects of Canada's refugee policy have received little attention in the current debate.

The fact that the 1976 Immigration Act made provision for the selection of refugees overseas, and for the landing of those forced to seek asylum in Canada once their status has been determined, has been ignored by those who see the current admission of refugees as a temporary expedient. Indeed, Michael Lanphier has argued recently that since the late 1970s an "irreversible shift" has occurred, with substantial numbers of refugee admissions becoming very much a permanent part of Canada's immigration stream (Lanphier 1988). Many have not recognized that the Charter of Rights and Freedoms applies to all on Canadian soil (or in Canadian waters) and thus significantly affects the rights of asylum-seekers. Many have accepted the government's assertions about the need for the legislation introduced as Bills C-55 and C-84 without questioning the fact that the 1981 Task Force on Immigration Practices and Procedures, two special advisers to the Minister of Employment and Immigration (Professor Ratushny and Rabbi Plaut), and the House of Commons Standing Committee on Labour, Employment and Immigration all suggested much milder reforms. As late as 1986, the government itself said it intended to follow the suggestions of Rabbi Plaut (Employment and Immigration Commission 1986b, 3).

The first aim of this discussion paper is therefore to provide the background information upon which informed discussion of refugee policy must be based. The paper begins with an examination of international refugee law, principally because this enables the obligations of countries toward refugees to be understood, but also because international law provides aclear definition of refugee status and an objective standard with which to compare

the policies of various countries. The paper then presents an analysis of the available data on world refugee numbers and the causes of refugee movements before discussing the policies adopted by some countries to deal with such movements.

This material establishes the international context for an examination of the Canadian approach. Only when armed with such information is it possible fully to evaluate Canada's contribution to the plight of refugees. The second aim of this paper is to provide an informed critique of Canadian refugee policy. The material on the international context provides an essential base for this critique, but it is also necessary to consider the underlying purposes of Canadian refugee policy, both as demonstrated in Bills C-55 and C-84 and over the long term. The final sections of the discussion paper sketch the outlines of such a critique and conclude with a series of recommendations for policies to be implemented at both international and national level.

Refugee problems and policies do not lend themselves to easy answers or simple solutions; rather what must be sought is consensus among a variety of competing interests. Thus, few would doubt that refugee policy is a legitimate aspect of public policy (international obligations and domestic law ensure this), but when refugee policy is discussed, the goals of Canadian foreign policy and the interest of Canada's increasingly varied immigrant community in helping those in danger in their countries of origin often lead in conflicting directions. It is often easier to credit the refugee claims of people whose political opinions coincide with our own over those whose views are markedly different; undifferentiating humanitarianism must be the operating principle if refugee policy is to be even-handed, yet this is hard to achieve. Canada's traditional alliances with France, Great Britain, and the United States, together with our desire to be a friend of the Third World, have led Canada down a sometimes tortuous path. While wanting to appear to be helping refugees from an increasing number of countries, domestic concern about immigration levels and the type of people being admitted as refugees has led to numbers being carefully limited and controlled on the ground of security concerns and economic value to Canada.

Indeed, at the heart of the difficulty of constructing any refugee policy lies the question of how to balance a country's sovereign right to control admission with the international rights of refugees and the rights owed to any individuals once they are present in Canada. It is in our ability to confront and resolve these contradictions that workable and humane solutions will be found to the public policy dilemma now facing Canada, and it is in our ability to acknowledge these contradictions that an understanding of the issues lies.

Part One: The International Context

1. The Refugee in International Law

Modern international refugee law is founded largely on two agreements reached in the aftermath of World War II.[1] Discussions involving the Economic and Social Council and the General Assembly of the United Nations led to the establishment via statute of an Office of the High Commissioner for Refugees, which began operations in Geneva in January 1951, and to the 1951 Convention Relating to the Status of Refugees, signed in July of that year (Dirks 1977, 176-179). Essentially, the Statute set up the machinery whereby the international community as a whole could respond to the needs of refugees, while the Convention laid down the principles by which individual states would respond to those needs. In view of the importance of both these agreements, it is useful to consider their main features and to review their limitations. Such a discussion will also establish the major international legal benchmarks against which Canadian legislation can be compared and set out clearly the international definitions for the terms involved in a study of these issues.

Under its Statute, the Office of the United Nations High Commissioner for Refugees (the UNHCR) was given the mandate to provide "the necessary legal protection for refugees" and to seek "permanent solutions for the problems of refugees". In performing these twin tasks, the Office of the High Commissioner was to be humanitarian and of an entirely non-political character (Goodwin-Gill 1983, 5; Capelli 1988).

For the UNHCR's purposes, the Statute defines three groups as refugees: first, all those covered by earlier international treaties and arrangements; second, refugees resulting from events occurring before 1 January 1951 and who, "owing to a well-founded fear of being persecuted", have fled their own countries and cannot rely on their national authorities for the protection of their lives, liberty and basic human rights (Goodwin-Gill 1983, 5; Capelli 1988). Third, the Statute in its broadest sense extends to

> Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

However, the statutory definition and mandate of the UNHCR were soon extended because of an inherent contradiction in the Statute. The Statute directs that the work of the UNHCR is to be related, as a rule, to groups and categories of refugees, yet the definition of 'refugee' it uses is one that requires a case-by-case examination of subjective and objective elements (the "well-founded fear of persecution" on several grounds) -- it is therefore essentially individualistic. Such a contradiction has become increasingly difficult to resolve as refugee flows have become larger to manage and has necessitating a broader definition of the concept of refugees who are of concern to the international community.

Thus, from 1957 the General Assembly of the United Nations began to authorize the High Commissioner to assist refugees who did not come fully within the 1951 statutory definition and developed the concept of the UNHCR's 'good offices' as a device to include refugees not within its competence. This 'group approach' recognized that it was not always possible to establish a well-founded fear of persecution on an individual case-by-case basis when large mass exoduses were involved; it therefore avoided the restriction of the legal definition by concentrating on the fact that those involved were without the protection of their own government -- a much more general criterion for identifying persons "of concern to the High Commissioner" (Goodwin-Gill 1983, 6-10).

According to the 1951 Convention, refugees are defined as individuals meeting these substantive criteria:

(1) they are outside their country of origin;

(2) they are unable or unwilling to avail themselves of the protection of that country or to return there;

(3) such inability or unwillingness is attributable to a well-founded fear of persecution; and

(4) the persecution feared is based on reasons of race, religion, nationality, political opinion, or membership in a particular social group (Goodwin-Gill 1983, 13).

Beyond this, the Convention stated that the term 'refugee' included, first, any person considered a refugee under earlier international agreements and, second, any person who qualified, broadly speaking, as a refugee under the UNHCR Statute. The Convention also placed temporal and geographical limits on its definition. Thus, its concern extended only to refugees who had acquired such status because of events occurring before 1 January 1951, and states were permitted either to limit their obligations to refugees resulting from events that had taken place in Europe or from "events occurring in Europe or elsewhere" prior to 1 January 1951 (Articles 1A and 1B of the Convention, see Annex 1). However, these temporal and geographical limits were later removed by the 1967 Protocol (Capelli 1988).

To those who meet its refugee definition, the 1951 Convention gives the right of *non-refoulement*, a principle requiring that refugees should not be returned to any country where they are likely to face persecution or danger to life or freedom (Article 33 of the Convention; see Annex 1). It is important to recognize that this crucial principle, which lies at the heart of refugee protection, did not -- at least in the 1951 Convention -- extend to include a right of admission to any of the states adhering to the Convention or, by extension, prohibit rejection by these countries, provided it did not involve *refoulement.*

However, the development of state practice since 1951 has recognized that *non-refoulement* applies to the moment at which asylum-seekers present themselves for entry (Young 1987b, 7). Goodwin-Gill argues that "certain factual elements may be necessary (such as human rights violations in the country of origin) before the principle of *non-refoulement* is triggered, but the concept now encompasses both non-return and non-rejection" (1983, 74-78, 97). (The fact that this extension of the principle is not expressed in international law makes it vulnerable to erosion, however, by states that wish to limit their

obligations toward refugees while remaining within the Convention and related international instruments.)

It is worth noting that while the general principle of *non-refoulement* has developed to include non-rejection, thus promoting admission, there has been no similar development regarding the concept of asylum, defined in terms of residence and lasting protection against the jurisdiction of another state. Such a separation appears to be "the price demanded by states in otherwise accepting the obligation to admit to their territories large numbers of refugees". Indeed, it is important to recognize that states have steadfastly refused, and have no obligation under international law, to accept an obligation to grant the right of asylum to refugees. Such a right is not found within the 1951 Convention, and the 1977 UN Conference on Territorial Asylum failed to achieve recognition of such a principle (Goodwin-Gill 1983, 103-121). As a result, the gap between *non-refoulement* and the right of asylum often creates a situation where refugees find themselves in legal limbo, not rejected at the frontier yet not allowed rights of residence or protection.

To decide whether individuals ('asylum-seekers') can be defined as refugees -- and are therefore entitled, for example, to the protection of the UNHCR and to *non-refoulement* by states party to the 1951 Convention -- it is usually necessary for a formal determination of refugee status to occur. For its own purposes, the UNHCR may not need a formal determination of status (*prima facie* evidence being sufficient), but in many cases it does, because a positive determination is often necessary to protect an individual in states that have no procedures for assessing refugee claims, or because some states have made resettlement available only to those who can be shown to be within the mandate of the UNHCR. As regards determination by states, the 1951 Convention does not deal with determining refugee status and leaves to states the question of how to implement decisions at the national level. In practice, both states and the UNHCR have sought to implement the formal determination of refugee status by establishing whether individuals meet the criteria of the definitions described above. This may be no easy task, for it involves assessing a complex of subjective and objective factors and interpreting them not only in the context of the humanitarian objectives of the relevant international agreements but also in the light of national legislation (Goodwin-Gill 1983, 21-22).

It is important to note that the broad principles of the Convention are hedged by specific limitations. Thus, individuals claiming refugee status must be outside their country of origin (otherwise, they are considered 'displaced persons'). The fact that a number of states may provide help for those who would be considered refugees once they left their country of origin does not alter this basic rule. Nor should it be overlooked that the Convention recognizes only five substantive criteria for establishing a well-founded fear of persecution (Grahl-Madsen 1966, 217). Thus, many other possible criteria, especially economic ones, are ignored.[2]

Beyond failing to satisfy these criteria, there are four legitimate circumstances in which refugee status may be denied or lost (Article 1F of the Convention). These include, first, voluntary acts of the refugee such as the acquisition of a new nationality or the *reavailment* of protection (a return to the country of origin); second, a change of circumstances, such as an amnesty offered by the country of origin. Third, war criminals, those guilty of serious non-political crimes and those guilty of acts contrary to the principles of the United Nations, are excluded from refugee status. Finally, those benefitting from the protection of other states or international agencies do not have to be accorded refugee status

by a third state (Goodwin-Gill 1983, 22, 47-54). This circumstance may also be invoked -- and is increasingly -- in cases where individuals are considered to have spent too long in transit, a concern reflected in both American and Canadian law (U.S. *Refugee Act* 1980; Wydryznski 1979, 165-6).[3]

The broad principle of *non-refoulement* is itself hedged by three possible qualifications. Article 33(2) states that the right of *non-refoulement* may not be claimed by refugees who constitute a danger to the security, or to the community, of the country they are in. Second, states can avoid triggering the principle of *non-refoulement* by declining to make a determination of refugee status (although it is argued that *non-refoulement* is a right not predicated upon formal recognition of refugee status). Third, the changes in the UNHCR refugee definition discussed earlier might be considered purely functional in that they permit the channelling of material assistance by the UNHCR but not the extension of protection to those covered by the expanded definition. States can therefore argue that with regard to the broad class of refugees and displaced persons, and especially in cases of mass influxes, their obligations do not extend to *non-refoulement.* Beyond these qualifications, there are a number of situations in which states may return or reject asylum-seekers without violating the principle of *non-refoulement* -- at least in the eyes of international law -- because legislation in these areas is poorly developed and the states involved have chosen to ignore developing international practices concerning rescue at sea. These situations include the cases of stowaways, rescue at sea and the arrival of asylum-seekers by boat. For all three cases, a categorical refusal of disembarkation cannot easily be equated with a breach of *non-refoulement* (Goodwin-Gill 1983, 72-73, 84-93, 96-97).

Some of the difficulties just discussed have been circumvented by more recent regional arrangements. Thus, the Organization of African Unity's 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa extends its refugee definition to include persons "who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order" are compelled to flee their home country. The 1984 Cartagena Declaration also supports the use of a broader refugee definition by states in Latin America and its incorporation in their national refugee legislation (UNHCR 1985, 19; Capelli 1988; Caminos 1988). However, these extensions of the Statute and the Convention have not been accepted on a worldwide basis.

The development of international law concerning refugees since the Second World War has thus established a structure allowing refugees to be clearly defined and guaranteeing them key rights. However, it has become apparent that there are important gaps in this structure, particularly with respect to asylum. Moreover, the qualifications incorporated in the Convention and Statute, the differences between them, and differences between these international agreements and state practice all conspire to introduce ambiguities of interpretation or grey areas where loopholes in the international law can be found. These appear to allow interdiction (interception at sea), refouling those who have not had their claims heard, expansive definitions of risk to national security, the refusal of asylum to those duly determined to be refugees, and the return of those who have passed through several countries on their way to seek permanent asylum. The nature of the structure itself creates difficulties at times. Goodwin-Gill has added that

> The legal framework within which the refugee is located remains characterized, on the one hand, by the principle of state sovereignty and the related principles of territorial supremacy and

> self-preservation; and, on the other, by competing humanitarian principles deriving from general international law (including the purposes and principles of the United Nations) and from treaty (1983, 215).

The structure, then, is flawed and subject to a series of opposing tensions. Nevertheless, it embodies the rights and obligations owed to refugees and by doing so lays down the standards by which they should be treated.

2. The Causes of Refugee Movement

The obvious cause of refugee movement lies in persecution that causes individuals to flee their countries of origin. However, such an explanation is neither an adequate analysis of why persecution has occurred nor entirely useful in the case of mass refugee movements where causes of individual persecution give way to those responsible for group persecution. Consequently, the causes of refugee movement require more extensive analysis, and because the bulk of the world's current refugee population is the result of large movements ('mass exodus') of people rather than of small numbers of individuals it will be valuable to consider the causes of refugee movement, using mass exodus as a focus.

The basic reference point for such work is a report by Sadruddin Aga Khan entitled "Study on Human Rights and Massive Exoduses", completed in December 1981. The study took place as a result of a resolution of the UN Commission on Human Rights, which appointed Sadruddin Aga Khan its Special Rapporteur. The resulting report explored the Commission's assertion that

> large exoduses of persons and groups are frequently the result of violations of human rights (Resolution 30, 11 March 1980)

The Special Rapporteur's study, funded largely by the government of Canada, sought to conduct its research by defining refugees in accordance with the OAU Convention and the Council of Europe's definition of *de facto* refugees, and by defining 'mass exodus' as a movement where "the number of persons leaving is very high in relation to the country of origin or the country of asylum" or where a high proportion of a particular minority leave their country of origin. The standard against which human rights violations were to be measured was the 1948 Universal Declaration of Human Rights (Sadruddin Aga Khan 1981, paragraphs 8, 15, 19-20, 25, 30-31). In this manner, the Special Rapporteur illustrated clearly the link between human rights abuse and the mass exodus of peoples. Indeed, as he states,

> To argue that the phenomenon of mass exodus would practically disappear if States respected -- or, in the case of economic rights, had the means to respect -- the rights elaborated in the Universal Declaration amounts to saying the obvious (Sadruddin Aga Khan 1981, paragraph 24).

The report also presents a clear model of the causes of refugee movements. Simply stated it is as follows: refugee movements are the result of human rights violations, which are themselves the result of a series of "push factors" (such as modernization and

colonialism) and related background causes (such as economic deterioration and population growth). However, the model is somewhat more complex than this, arguing that some background causes and push factors (such as famine and external aggression) operate almost directly to cause refugee movements, given that the governments of the affected countries can do nothing to counter the obvious human rights violations that result (such as hunger or the lack of security). The model argues that not all human rights violations produce mass exodus -- some violations provoke the movement of specific individuals. Finally, the model states that "pull factors" (such as the accelerating speed of travel and information and the attractions of the developed world) are important in providing the final incentive for many people to move (Sadruddin Aga Khan 1981, paragraphs 24, 34, 63-87). Indeed, by demonstrating that it is not only human rights violations but also background causes, push factors and pull factors that are responsible for mass exoduses, the report shows that the full context of refugee-causing situations must be borne in mind when forming solutions. In short, factors such as economic underdevelopment and external aggression must be considered as important causes -- and areas of solution -- in conjunction with the direct violation of human rights in situations of mass exodus.

More recent work has served only to reinforce Sadruddin Aga Khan's conclusions about the causal factors involved and how they are related (Suhrke 1983; Beyer 1987, 12-15; Drüke-Bolewski 1988; Rizvi 1988). Thus, for example, the "Report of the Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees", issued in 1986, argued in its conclusions that

> The analysis of causes and factors showed that the emergence of massive flows of refugees is a result of a number of complex and often interrelated political, economic and social problems related to, and influenced by, the overall international situation (United Nations 1986, paragraph 63).[4]

Work has also continued to emphasize the importance of the major individual factors within the complex causal web described above. Thus, concerning socio-political causes, Zolberg has argued that "integration crises" have been "one of the most important triggering mechanisms of refugee flows throughout modern history". These occur most typically when the ruling élite of an emerging state attempts rapid transformation of disparate populations within its territory into a cohesive homogenous unit approximating the model of the Western state. In this process, opposition is not tolerated and persecution may result (Zolberg 1983, 18-19). Regarding socio-economic causes, Stein has confirmed the Special Rapporteur's earlier findings with more recent data, observing that of the 36 countries listed as low-income (less than U.S.$400 per capita GNP) by the World Bank in 1986, 27 "are or recently have been involved in refugee, or refugee-like situations as sources or sanctuaries or both" (Stein 1988).

In addition, researchers are increasingly taking the position that refugee movements are not only the result of particular countries' internal conditions but are also responses to major external and international forces. Thus, Zolberg and his co-authors have argued that as the world economy expands and integrates, it exacerbates economic and political underdevelopment in the developing countries because its expansion is at their expense. They have "no choice but to participate in the global economy on disadvantageous terms" (Zolberg, Suhrke and Aguayo 1986, 154, 157-8). The results is to contribute to one of the root causes of refugee movements: continued economic underdevelopment.

Another implication of the growing interdependency of the world economy has been the growth of a single network of communications and the development of modern transportation systems across the globe. This has enabled potential refugees not only to discover what conditions are like elsewhere in the world but also to travel much further in their search for protection (Kritz 1983, 1, 4). One result of these developments has been that countries traditionally isolated from refugee movements have increasingly found that asylum-seekers are now able to reach their borders and claim refugee status. The effects of speedier and easier travel have been, as it were, to shorten the distance between countries and in many cases to turn countries of resettlement into countries of first asylum -- access to air travel has in effect made such countries the near neighbours of refugee-producing countries. One result was that countries previously isolated discovered that their refugee policies were outmoded. It was no longer sufficient to rely solely on policies based on selecting refugees from camps abroad for resettlement; the increasing arrival of asylum-seekers called for an organized "inland determination system" as well to determine the refugee status of individuals already in the country.

Three other international influences are of importance. Outside support for various factions in national domestic disputes adds considerably to the potential for dislocation and undoubtedly magnifies the potential for large refugee flows. Such interference is not easily avoidable, however, since the present global balance of power has made political change in even the poorest peripheral nations of supreme geopolitical importance. Because of this, external intervention -- either directly or via surrogates or aid -- is "a general structural propensity of the contemporary international system" (Zolberg, Suhrke and Aguayo 1986, 154, 167).

In certain situations, refugees may find themselves used as an instrument of foreign policy against their country of origin by the country where they have found refuge. Indeed, the UNHCR recently stated that "refugees are now frequently viewed as legitimate tools for the advancement of state policies" (UNHCR 1986, A/AC.96/685). The reasons for this are perhaps twofold: certain countries may wish to embarrass or weaken another state by accepting its refugees and thereby highlighting the fact that opposition exists within that state. Hathaway has argued that in fact the very definition of 'refugee' accepted in 1951 was one designed to facilitate movement from the Soviet bloc and thus to embarrass that power (Hathaway 1988b).

Other states have sought to use refugee communities within their borders by allowing them to attack their country of origin. Refugee camps thus become bases for refugee-warrior communities where many refugees become radicalized and from which a cycle of violence is set in train that exacerbates refugee flows and increases tensions. The Palestinian and the Afghan camps in Syria and Pakistan illustrate this point, while the government of Zimbabwe claims camps in Botswana are used for dissident activity (Amnesty International 1987, 5). When countries of asylum use refugees in this way, they have no incentive to develop durable solutions; as a result, many people continue to be refugees for longer than would otherwise be the case. In other situations, the large numbers and political involvement of refugees have had a destablilizing effect on countries of asylum, a fact that has encouraged countries of origin to continue to create additional refugee movement rather than eliminate its causes.

The remaining international factors to be considered are the refugee policies of the receiving countries. If these are very restrictionist, offering potential refugees nowhere to flee, such individuals may suffer great harm in their countries of origin. The case of the Jews in Europe during the Second World War exemplifies this situation, and Canada's refusal to lend assistance has been well documented:

> Between 1933 and 1945 Canada found room within her borders for fewer than 5,000 Jews; after the war, until the founding of Israel in 1948, she admitted but 8,000 more. That record is arguably the worst of all possible refugee-receiving states (Abella and Troper 1983, xxii).

On the other hand, if countries are considered generous -- at least by UNHCR standards -- in their refugee policies, they may attract larger numbers of refugees than might otherwise have fled the country of origin -- the so-called "magnet effect" (Zolberg, Suhrke and Aguayo 1986, 154). This is, of course, very difficult to measure, but the argument is that individuals who would not otherwise have left their country are encouraged to do so by the relatively better situation they will experience as refugees in a country whose policies toward refugees (in terms of food, resettlement and the right to work) are generous. Implicit in this argument is the view that many such people are not genuine refugees but economic migrants seeking a better life. Implicit, too, are the arguments used to justify harsh refugee policies ensuring that no magnet effect occurs.

The causes of refugee movements are many and varied. However, as has been shown, there is agreement about their nature, on the fact that they interact in a complex manner, and on an approximate model of that interaction. This agreement shows that the principal root causes can be identified within the realms of low economic development and external intervention: the 'socio-political' and the 'socio-economic' areas discussed above. This identification offers, on the one hand, some encouragement, for it directs attention to areas where solutions may be sought for the plight of refugees. On the other hand, it offers disappointment because it suggests that in the face of continuing (if not increasing) interdependence of the world's economy and geopolitical systems, the root causes of refugee-creating situations will remain and probably increase.

3. International Refugee Movements

Beyond international law and the causes of refugee movements, a full understanding of world refugee issues requires an appreciation of the total number of refugees in the world, the growth of this number, the regional distribution of refugees, and the movements of refugees that have occurred. Such knowledge places Canada's present and past contributions to refugee aid and resettlement in perspective and indicates the country's situation with regard to future trends.

The total number of refugees in the world is a figure so fraught with definitional issues and data problems as to be highly elusive.[5] However, some impression of the numbers involved can be gained from the UNHCR annual refugee totals by country of asylum for 1984 to 1987 (see Annex 2). These show that by 1987 there were 12,218,000 refugees worldwide. This total omits 2,185,117 refugees under the mandate of UNRWA in the Middle

East in 1987 (UNRWA 1987, 2). If these are added, the resulting global total is 14,403,117 refugees according to the definitions of UNRWA and the UNHCR. An alternative figure from the United States Committee for Refugees (USCR), using a definition of "refugees in need of protection and/or assistance", indicates that there was a total of 13,296,460 such individuals worldwide in 1987 (USCR 1988, 31-34).[6]

A comparison of the same data sets over time indicates the extent of recent change in the numbers. The detailed UNHCR data provided in Annex 2 shows that the world population of refugees, as defined by the UNHCR, rose from 10,769,700 in 1984 to 12,218,000 in 1987, an increase of 13.4 per cent. USCR data on refugees in need of protection and/or assistance show an increase from 9,091,000 in 1984 to 13,296,460 in 1987, or a rise of 46 per cent (USCR 1986, 36-37; 1988, 31). This impression is confirmed by all leading scholars, who have argued that refugee numbers are increasing (Kosinski 1988; Stein 1988).

In terms of regional trends, the UNHCR data in Annex 2 show that the regions with the most rapidly increasing refugee population between 1984 and 1987 were Africa (increasing by 22 per cent) and the Middle East/South Asia (21 per cent); the numerical increase of almost 1 million in the latter region was considerably greater than Africa's increase of 625,000 refugees over the period. Europe witnessed an increase of 14 per cent (89,000) while the East Asia and Pacific region experienced a decline of 27 per cent as international assistance efforts in Indochina continued. By 1987, the Middle East/South Asia region accounted for 47 per cent of the world's refugees, a figure that had increased by 3 per cent since 1984; Africa's share was 28 per cent and had increased by 2 per cent. The refugee populations in all other regions were either declining or stable in percentage terms over this period, an assertion confirmed by USCR data and by other authorities (USCR 1983, 61; 1987, 36-37; Kritz 1983, 6; Rogge 1985, 2, 19). It is important to note that these regional changes were largely the result of change in a few principal countries of asylum. Thus, large increases in Sudan, Malawi and Iran, for example, were mainly responsible for the overall increases in their respective regions between 1984 and 1987.

The UNHCR data do not identify the sources of refugees. However, USCR data do provide such information for the category they define as "refugees in need of protection and/or assistance". The data show that the major source regions of refugees in 1986 were the Middle East/South Asia (64 per cent of the total) and Africa (26 per cent) and that both these regions produced substantial increases in numbers of refugees between 1984 and 1986. By 1986 the leading producers of refugees were Afghanistan, the territory of Palestine and Ethiopia. These three represented 69 per cent of all refugees in need of protection or assistance in 1986. In general, the data suggest that the majority of refugees currently originate from Third World countries (USCR 1987, 36-37).

When these data are combined with USCR data on refugee asylum, flows of refugees from source countries to countries of asylum to be seen. (However, it must be noted that the flows do not represent annual movements but total cumulative movements over many years, that the USCR records data only on refugees in need of protection and/or assistance -- thus ignoring other definitions of refugee -- and that such data cannot show movements of refugees from source countries or countries of asylum to countries of resettlement and thus must underestimate the total amount of refugee movement.) By 1986, USCR data indicate that the leading flows were from Afghanistan to Pakistan (2.8 million), Afghanistan to Iran (1.9 million) and Palestine to Jordan (823,000). These movements alone represented 47 per

cent of all world flows by 1986. The data also suggest that the main movement in Latin America has been from Central America to neighbouring states, especially Mexico. In Africa the main movements have been from Ethiopia to Somalia and Sudan, from Mozambique to South Africa and from Angola to Zaire. In East Asia and the Pacific the main movement has been from Cambodia to Thailand, and in the Middle East and South Asia region, the principal movements have involved Afghans and Palestinians fleeing the turmoil in their countries (USCR 1987, 36-37; maps of such flows can be seen in Kidron and Segal 1984, 26; Kosinski 1988).

Three observations can be made about movements of refugees. First, it is important to note the complexity of movements. Some countries, such as Sudan, act as both producers of refugees and countries of asylum. Second, only a few countries are involved in these movements as major sources or countries of asylum. Third, the data illustrate that the flows are concentrated within the continental regions used in Annex 2; the majority of movements are within such regions, and very few flows cross such regional boundaries.

These observations indicate that because most refugee-producing countries are in the Third World, the bulk of refugee pressures fall on neighbouring Third World nations, especially those in Africa and the Middle East/South Asia region. Consequently, the principal burden falls upon the developing world; the developed West is largely unaffected by refugee movements. In this sense, the emphasis on 'regional solutions' to refugee problems is an approach that continues to place the burden upon the developing nations. Only two developments threaten to disturb existing patterns and in doing so to engage the West. The increasing ability of refugees to reach Europe and North America by air and sea threatens to increase the role of these regions in providing first asylum (Smyser 1987, 92). Second, the development of refugee-producing situations on the borders of the developed world (especially, for example, in Central America) also puts direct pressure on the West to accommodate refugees in a way that existing patterns and refugee flows have not done.

To place these facts about refugee movements in their proper context, it is important to bear two major considerations in mind. First, statistics on refugee flows must be seen in relation to the size of the receiving country's population or gross national product if a full appreciation of the refugee burden is to be gained. Thus, in Jordan the average GNP per capita in 1987 was U.S.$1,560 and one-quarter of the total population was made up of refugees; that is, 1 out of every 4 people living in Jordan was a refugee. In Namibia the figure was 1 in 33, compared with Canada's 1 in 113 and average GNP per capita in 1987 of U.S.$13,670 (USCR 1983; 60-61; 1984, 38; 1988, 33). Nor can numbers convey the fact that in areas such as the Middle East the enduring nature of refugee problems has meant that a generation or more has spent its life in refugee camps. Indeed, it must not be forgotten that even the smallest refugee population endures severe hardship and must not be ignored.

Second, statistics cannot convey a complete picture of the size of the world's refugee problem because they fail to include a number of other groups. Thus, there are considerable numbers of internally displaced people who could be described as refugees except that they have not crossed an international boundary. A minimum estimate for their number was 18.2 million in 1987, including 3.5 million in South Africa, 2 million in Mozambique and 2 million in Afghanistan. Second, at least 190,000 people were voluntarily repatriated in 1987 (either as a spontaneous movement or as part of a formal UNHCR program); the majority were the almost 100,000 people who returned to Uganda from Sudan and Zaire. Third, in 1987 at least 2,249,700 individuals were considered to be in "refugee-like circumstances" by

USCR. These included undocumented aliens and asylum-seekers who could well be considered refugees, although they might not have had the right to asylum in their present country of residence, or who for technical reasons lay outside the jurisdiction of international relief organizations. Some 800,000 Iranians in Turkey, 600,000 undocumented aliens in the United States and 137,000 recent asylum applicants in Europe fell into this category (USCR 1988, 32-34). Clearly, then, the total number of 'refugees' is difficult to estimate and varies with the definitions used and the purposes for which the estimate is prepared. Certainly, the figures provided by USCR and the UNHCR must be seen as only minimum estimates of the number of people that need some form of assistance, whether it be of an emergency nature or in connection with the costs of durable solutions.

Having considered these global patterns, it is interesting to compare the international statistics with those for Canada's refugee admissions. In terms of source countries for Convention refugees and members of the Designated Classes, Table 1 summarizes the period 1982-1987 by world region. Over this period, Eastern Europe and Southeast Asia each represented a third of all refugee flows into Canada and thus dominated the picture. Latin America contributed 17.6 per cent while Africa (5.8 per cent), the Middle East (4.3 per cent) and Others (2.5 per cent, principally Sri Lanka and Afghanistan) were minor contributors to the total. However, this overall picture conceals some change. Thus, in 1979 and 1980 the bulk of Canada's refugee intake came from Indochina (EIC 1982, 32), but by 1982 Eastern Europe contributed 57.4 per cent of the total and Southeast Asia's proportion had fallen to 32.2 per cent. Latin America (4.8 per cent), the Middle East (1.6 per cent), Africa (2.3 per cent) and Others (1.2 per cent) were all source regions of relatively little importance. By 1987, Eastern Europe's contribution had fallen from its 1982 level to 34.4 per cent, and Southeast Asia's contribution had also diminished to 29.6 per cent. All other world regions saw increases: the share arriving from the Middle East rose to 4.5 per cent, Africa to 6.6 per cent and Others to 4.3 per cent. The largest increase was recorded by Latin America, whose contribution rose to 20.6 per cent by 1987, suggesting that this region is becoming the third principal source of Canada's refugee flows. Table 2 presents data on the latest available breakdown by country and shows that the regional picture is determined largely by one major source country in each region and founded on the contributions of a very limited range of countries. Thus, while Eastern Europe contributed 31 per cent of Canada's refugee intake in 1986, Poland alone was responsible for 21 per cent. Vietnam contributed 21 per cent, Kampuchea 9 per cent, El Salvador 13 per cent and Ethiopia 5 per cent. No other country recorded over 4 per cent. The five countries just mentioned were thus responsible for 60 per cent of all refugee admissions into Canada from abroad in 1986. These figures are at marked variance with these countries' shares of the total world refugee population.

Canadian legislation has allowed either government or private sponsorship of refugees, and the patterns of such sponsorship also bear examination in terms of their regional distribution. Table 1 shows that between 1982 and 1987, the number of privately sponsored refugees for most world regions was less than half of the government-sponsored number, with the notable exceptions of Latin America (for this region, private sponsorship was very low) and the Middle East (for which region, private and government-sponsored refugee numbers were very similar). As a result of these trends, 41 per cent of all privately sponsored refugees between 1982 and 1987 came from Eastern Europe, 40 per cent from Southeast Asia and only 4 per cent from Latin America, 5 per cent from Africa and 7 per cent from the Middle East/West Asia region. Interestingly, these patterns were borne out by the pattern of private group sponsorships between 1982 and 1986 (EIC, Policy and Program Development Branch, Refugee Affairs Division 1987b, 49).

Table 1 also shows that of the government-sponsored refugees arriving between 1982 and 1987, 31 per cent came from Europe, 33 per cent from Southeast Asia and 23 per cent from Latin America. Thus, government sponsorship has put more emphasis on Latin America than private sponsors have. It is worth noting that in this regard, the pattern of government sponsorship is becoming increasingly like the pattern of general immigration. Thus the 1986 Census noted that more than 70 per cent of the immigrants who arrived between 1981 and 1986 were born in non-European countries (Statistics Canada 1988, 1).

The government-sponsored allocations are part of the annual refugee plan. Between 1979 and 1988 the plan evolved as follows: the importance of Southeast Asia as a region from which Canada would sponsor refugees declined; that of Eastern Europe rose and then declined, while that of Latin America rose. Thus, by the time of the 1988 plan, these three regions were approximately matched, with government-sponsored allocations of between 3,000 and 3,400 each. Africa saw a consistent rise in its allocation from 200 to 1,000; the Middle East/West Asia region also saw an increase, from 400 to 1,800 by 1988. The total by 1988 stood at 13,000, an increase of 3,000 since 1979, but a decrease of 3,000 since 1981 (EIC, Policy and Program Development Branch, Refugee Affairs Division 1985, 32; 1987b, 38; EIC 1987f, 11).

It is interesting to see how these plans compared with what actually happened. Table 3 shows that the totals allocated in the plans between 1984 and 1987 were always surpassed by the numbers of incoming government-sponsored refugees. In regional terms, the allocations for Southeast Asia, Eastern Europe and Latin America were usually exceeded, but the actual numbers consistently fell short of the allocations for Africa and the Middle East/West Asia region. How this is possible, given the number of refugees in these regions, is an issue best considered later in this report.

The final element in Canada's refugee and humanitarian programs is inland determination landings. The data for these landings come from the Refugee Status Advisory Committee (RSAC) and are valuable because they indicate not only the pattern of acceptances, but also the acceptance rate by country and the pattern of incoming claims.[7]

Table 4 shows the total number of incoming claims received by RSAC (or by the minister before RSAC's creation) between 1978 and 1988. Between 1979 and 1985 the number of claims increased gradually from 1,000 to 5,000 per year. The number then fell by 1,000 during 1985-86 before almost doubling to 7,373 and doubling again to 15,805 during the years affected by the Administrative Review and the B-1 list, (measures described in Section 6) which may have encouraged larger numbers of individuals to seek asylum in Canada. Of the 23,702 claims made between 1981 and 1986, 30 per cent were made by individuals from Guyana and India and 20 per cent by people from Sri Lanka, Iran and El Salvador (Table 5). These countries were Canada's major source of refugee claimants in this period. Table 5 also shows that 38 per cent of all incoming claims were from individuals from countries involved in Canada's refugee and humanitarian programs in some way, while 62 per cent were from countries that were not.

Considerable changes occurred in this pattern over the period. Thus, as Table 5 shows, the large number of claims from individuals from India ceased after 1982 while increases in claims from Guyana occurred in 1984 and 1985. Such annual changes can be seen more clearly in Table 6. The table shows that between 1981 and 1987, the leading

contributor of incoming claims changed from India to Guyana and then to Sri Lanka; the top three contributing countries varied between India, Poland, El Salvador, Guatemala, Guyana, Sri Lanka and Iran. However, Table 6 also underlines the main features of Table 5, showing that the top ten source countries of individuals making claims in Canada have usually represented 75 per cent of all claims and confirming the importance of the leading source. Thus individuals from India were responsible for 40 per cent of all claims in 1981 and 1982, and those from Guyana for 20 per cent in 1984-85 and 1985-86.

In terms of the acceptance rates for incoming claims, it is possible to distinguish three groups over the period 1983 to 1985. High rates of acceptance (greater than 60 per cent) were recorded for claimants from Iran, Chile, Afghanistan, Ethiopia and Iraq; medium rates (between 30 and 60 per cent) for claimants from Sri Lanka; low rates (under 30 per cent) for Guyana, Jamaica and Bangladesh, while Guatemala and El Salvador were notable for their declining acceptance rates over the period. It is worth noting that only those in the low acceptance rate group were countries not involved in Canada's refugee and humanitarian programs in any substantial way. The changes in procedure in 1986 served only to confirm these patterns, to amplify the differences between the three groups, to add Somalia to the medium-rate group and to add Portugal, Ghana, India and Haiti to the low acceptance rate group. Only the increasing acceptance rates for Guatemala and El Salvador marked any significant change from previous trends (EIC, Policy and Program Development Branch, Refugee Affairs Division 1984, 32; 1985, 40; 1986, 66; 1987b, 66).

These rates of acceptances, when applied to the number of incoming claims, produce the number of acceptances by country of origin shown in Table 7. Over the period 1980 to 1988, the top ten source countries comprised a small group of countries representing between 74 per cent and 95 per cent of all acceptances each year. Indeed, the top three source countries alone represented between 40 per cent and 70 per cent of acceptances each year and 54 per cent of acceptances (4,763) between 1980 and March 1986.

Changes between 1986 and 1988 meant that a somewhat different set of countries occupied the top ten positions. Thus, for example, Somalia and Ethiopia became the leading contributors between 1986-87 and 1987-88, and South Africa made its first appearance in this group in 1987-88. However, as the RSAC resumed its jurisdiction over all incoming claims, so the more 'traditional' sources of acceptances resumed their leading positions.

The overwhelming impression from these Canadian data is that the pattern and size of refugee flows into Canada bears little resemblance to those of world refugee flows. However, it is equally important to note that the pattern of incoming claimants is not representative of world refugee flows either. The reasons for these discrepancies must be sought in the evolution and application of Canadian refugee policy.

4. Existing International Responses

The world community has attempted to deal with massive refugee flows in a variety of ways, seeking to ease the plight of the refugees or to relieve the pressure on countries of settlement while searching for solutions to deal with the root causes as well.

The approaches used can be categorized simply as follows, although to do so does not exclude the possibility of several methods overlapping in any one response.

1.	Settlement:	in countries of first asylum; in countries of resettlement; repatriation;
2.	Financial assistance:	to aid refugees directly; to foster economic development in refugee camps; to foster long-term economic development in source and asylum countries;
3.	Deterrence:	to restrict refugees' access to asylum; to prevent the 'magnet effect'; to prevent refugees reaching asylum;
4.	International co-operation:	international protection; international assistance; 'burden-sharing'.

This typology provides a useful framework for considering the range of existing responses to seeking general solutions to refugee problems.

Settlement -- in the form of local settlement and integration, resettlement in a third country, or voluntary repatriation -- represents what has become known as a "durable solution" to the plight of refugees, for these approaches offer the potential for permanent solutions (Smyser 1987, 32). However, in the first instance, settlement in any form is of principal importance to refugees fleeing persecution. In this regard, the policies of countries of first asylum are a crucial determinant of the refugee's ability to escape and seek aid. A number of countries are notable by their generosity in this regard: Sudan's policy of admitting all refugees who seek asylum within its borders has been seen as a vital part of the African refugee relief effort and has been hailed as a model for Africa and the world (Rogge 1985, 55-57). As has been shown, the majority of the world's refugees find refuge in countries of first asylum, and many authorities, such as the OAU, regard local settlement as the only major viable solution. However, the large numbers of refugees in camps around the world and the huge numbers of refugees in need of aid and/or protection in countries of asylum demonstrate the scope of the problem. Two countries are illustrative of the difficulties and challenges.

Sudan currently has the largest refugee population of any African nation. At present, 90,000 Ugandans and 45,000 Chadians have found refuge in Sudan, but by far the largest group of refugees in Sudan, 677,000 in number, are the Ethiopians, principally from Eritrea, Tigray and Wollo provinces. They began fleeing Ethiopia in significant numbers in 1967 when the government of Haile Selassie took measures against an Eritrean secessionist movement. In September 1984 the influx increased dramatically in response to the Ethiopian drought. Over the next nine months 300,000 new arrivals entered Sudan. Movements of Ethiopians stabilized in 1985 and 1986 as 78,000 repatriated following the resumption of rains (USCR 1986, 47; 1988, 42). Large internal displacements have also occurred: up to

85 per cent of civilians in southern Sudan are currently displaced, and no international humanitarian assistance has been forthcoming (Frelick, personal communication, August 1988).

Sudan is a signatory to the 1969 OAU Convention, whose principles are incorporated in the Regulation of Asylum Act (1974); the latter act is viewed as a model of African refugee law (USCR 1985, 46). Sudan offers asylum en masse but does not grant citizenship rights to refugees and maintains that eventually all must return voluntarily to their countries. By law refugees have rights to employment, education, and to travel and identity papers (Karadawi 1987, 122).

Sudan's settlement schemes are basically of two types. In land settlements, refugees become self-supporting by growing their basic food needs, while in wage-earning settlements, refugees become self-reliant by hiring out their labour. In fact, Sudan is distinguished from other African asylum states by the extent to which rural economies have come to depend upon an abundant supply of relatively cheap refugee labour. In most rural refugee settlements outside Sudan, self-sufficiency is predicated upon refugees becoming subsistence farmers (Rogge 1987b, 86-90).

It is Sudanese policy that all refugees be settled on designated rural settlement schemes. To this end restrictions are imposed on refugee movements within Sudan; refugee travellers are required to show identification cards and travel passes at police checkpoints. A high rate of refugee concentration has nevertheless developed in urban centres, particularly Khartoum. In these cities refugees are left to their own devices. High unemployment rates among nationals have forced the government to regulate the employment of qualified refugees in the cities by issuing work permits. The Sudanese Labour Office will not approve a work permit for a refugee until it determines that no Sudanese applicant could take the vacant position (Goitom 1987).

Recent developments suggest that local populations in Sudan are growing impatient with the refugee presence. Refugee children are reportedly straining the resources of schools, and urban refugees have caused rents to skyrocket (*Refugees* March 1986, 27). In 1987 the Sudanese government began to crack down on undocumented persons living in major cities. For a while doctors in one city refused to treat refugees. In Khartoum, the government rounded up undocumented persons, destroyed the shanty towns where they lived, and forced them to leave the city. Other restrictive measures may follow. Indeed, concern has been expressed that those Chadian refugees who remain in Sudan do so because the quality of life in the refugee camps is better than that in their home villages. In an attempt to discourage their continued stay the Sudanese government has refused to make land available for settlement (USCR 1988, 42).

Pakistan is another country worthy of consideration for its asylum practices. Pakistan currently hosts the heaviest concentration of refugees in the world; the country is home to 3.2 million registered Afghans who fled following the Soviet invasion of their homeland in 1979. When the 2 million Afghans who sought refuge in Iran are included, between 25 and 30 per cent of Afghanistan's population is in exile in neighbouring states. The refugee flow between Afghanistan and Pakistan reached a peak between January and June 1981 when an estimated 4,700 crossed the Pakistan border daily. In 1987, arrivals averaged between 6,000 and 8,000 per month (Hatch Dupree 1988, 17). At present there are 370,000 unregistered Afghans in Pakistan in addition to the registered population of 3.2 million. There are also significant

numbers of Iranian refugees -- as many as 20,000 -- who are not officially registered. Most of the 4,000 non-Afghan refugees registered with the UNHCR in Pakistan are also Iranians (USCR 1988, 73).

Through the initial years of the crisis, Pakistan was widely praised for its welcoming approach to the influx of Afghan refugees. Refugees are allowed to work and move about without restriction. Ultimately, however, the Pakistani government considers the position of refugees to be temporary. Pakistan is not a party to the 1951 Convention or 1967 Protocol. Its commitment to assisting the Afghans is based less upon the dictates of international law than upon the Islamic injunction to succour other Muslims suffering persecution. The *Pushtunwali*, Code of the Pushtun, which enjoins Pushtun to aid fellow Pushtuns, has also enhanced the positive reception (Hatch Dupree 1988, 18).

Registered refugees receiving food rations live in 328 refugee villages scattered mostly throughout the province of Baluchistan, Northwest Frontier Province and in the Federally Administered Tribal Areas, all of which are located on the border with Afghanistan. The overall ratio of refugees to local populations is one to six. The cost of maintaining the refugees in villages is high. Pakistan spends $1.2 million a day to provide the Afghans with food, clothing and shelter. Half of this amount comes from the Aid-to-Pakistan Consortium, acting through the UNHCR and World Food Program (Greenway 1987, 193). In those refugee villages located around Pakistani cities the refugees have substantially enhanced the local economy by operating hotels, restaurants, shops and transport services. However, most of the villages are situated in mountainous and desert areas that have been adversely affected by the introduction of such masses of people. Programs have consequently been initiated by the World Bank to repair road and water systems and conduct reforestation (Hatch Dupree 1988, 18).

Policy developments in Pakistan since late 1986 suggest that the welcome extended to Afghan refugees is beginning to wear thin as their numbers increase and the duration of their stay grows. In December 1986 Pakistani authorities conducted a clean-up operation of drug dealers in a low-income area of the city of Karachi, following reports of extensive illegal activity on the part of the residents. Among those rounded up by police were 18,500 unregistered Afghans, who over the years had come to outnumber Pakistanis in the local area. The huts and shops in the area were subsequently razed and the Afghans relocated to a tent city on the outskirts of Karachi. In 1987 authorities had extended only ad hoc assistance to this group (*Refugees* May 1987, 27; Hatch Dupree 1988, 18).

A rash of terrorist bombings in the Northwest Frontier Province has also driven a wedge between Afghan refugees and local residents. Many see the terror campaign as an effort by Afghan secret police to lessen Pakistan's support for Afghan refugees. Cross-border attacks from Afghanistan have also become more frequent. The bombings resulted in Pakistan security forces removing groups of refugees from the affected cities and, in the case of 5,000 unregistered refugees, from the Northwest Frontier Province to Punjab Province. In 1987 the Pakistan government was reportedly slow to register new arrivals from Afghanistan, who numbered at least 68,500. New arrivals are no longer being settled in the Northwest Frontier Province, where 75 per cent of the refugees are already located, but are being sent to a district of the Punjab. Late in 1987, in response to a wave of bombings, the Chief Commissioner for Afghan Refugees said that the government intended to restrict Afghan refugees to their camps. However, no date for implementation of this plan was given (USCR 1988, 72).[8]

Unless local settlement and integration can occur, the search for durable solutions must continue. Countries of third asylum ('resettlement' or 'overseas resettlement') play an important role in this regard for they offer refugees the possibility of permanent settlement and lessen the burden on countries of first asylum -- which, as has been shown, are mainly less developed countries. The roles of Canada, Australia and the United States are particularly noteworthy in this respect. Between 1956 and 1979, the United States accepted approximately 1 million refugees, and almost 1 million have been admitted from overseas since 1980. Over the period 1980 to 1987, admissions fell from very high levels caused by the acceptance of large numbers of Indochinese refugees to much lower levels as this movement slackened and (in 1986) as deficit-reducing measures lowered the admission ceiling. In 1987, 64,831 refugees were admitted from overseas, in a pattern illustrating overall trends.

Southeast Asians made up the largest group at 40,115 and Latin Americans the smallest, with 315 (this included 36 Nicaraguans and 6 Salvadorans, the first non-Cuban refugees to be admitted from the region in two years). Refugee admissions from Eastern Europe and the U.S.S.R. increased to 12,300 from 9,500 in 1986. In addition, the Immigration and Naturalization Service approved 4,062 asylum cases in 1987, showing an annual approval rate of 54 per cent, compared with 31 per cent the previous year. This increase has been attributed to the rise in acceptance rates for Nicaraguans from 14 per cent to 84 per cent and, in part, to the Supreme Court ruling in *Cardoza-Fonseca* (March 9, 1987), which liberalized the standard for granting asylum (North 1983, 270; Frelick 1987a; Frelick, personal communication, August 1988; USCR 1988, 75).

Australia is among the world leaders in terms of numbers of refugees accepted for permanent resettlement; since the end of World War II Australia has received more than half a million refugees. The country's approach to refugee policy has changed dramatically during this period. From the mid-fifties until 1975, Australia's yearly intake was generally small, but it rose in response to major upheavals in Europe. Settlement policies were directed toward assimilation; European refugees were accordingly settled in much the same way as other migrants. However, since 1975 Australia has been much more prepared to accept other than European refugees. The change in approach to refugee policy was in response to the arrival of the first boatloads of Vietnamese in Australia in 1976. The intake of Vietnamese, it was initially emphasized was to be consistent with Australia's capacity to absorb the refugees. By 1981, Australia was fourth in the world in terms of number of Indochinese resettled, and by 1986 85,000 boat people had been admitted (Cullen 1983, 36; USCR 1987b, 17). It is worth noting that the prospect of large numbers of direct arrivals prompted the establishment of Australia's Indochinese resettlement program, in an attempt to reassure first asylum countries in Southeast Asia and dissuade them from encouraging onward movements (Goodwin-Gill, personal communication, August 1988).

Resettlement in third countries is important not only as a durable solution, but also as part of a chain of activities that allows countries of first asylum to accept refugees on the understanding that they will later be admitted by countries of third asylum. If this chain is broken by countries of third asylum refusing to accept refugees, then the consequences can become very serious. If countries of first asylum become unable (or unwilling) to accept further refugees, the ultimate result is that individuals are no longer able to seek refuge from persecution. For some years, considerable numbers of refugees from Indochina have been able to seek asylum in the Philippines and Indonesia because they will be resettled eventually

in third countries, and refugee processing centres have developed in these countries for this purpose. A current example concerns Hong Kong, whose officials have cited the resettlement countries' reluctance to resettle Vietnamese boat people arriving in the colony as a justification for Hong Kong's search for other solutions. The Hong Kong government recently stated that Western resettlement is essential if the "refugee system", of which Hong Kong is a part, is to continue to function (USCR 1988, 46-47; BBC 1988).

Indeed, it is worth noting that among the refugee-generating areas of the world, Southeast Asia is alone in its almost total dependence upon third-country resettlement as the only acceptable long-term solution for refugees. From the beginning of the post-Vietnam War exodus, all the ASEAN states made it known they would provide only temporary asylum pending resettlement (Rogge 1987, 233). Thai refugee policy was summarized succinctly by a high-ranking official in May 1986:

> That Thailand will give assistance to refugees in accordance with humanitarian principles so long as it does not adversely affect Thai sovereignty, national security, and national interests, and will provide temporary shelter while refugees await transfer to settlement in third countries or return to their homeland under the voluntary repatriation plan. The Thai government does not have any policy for refugees to have permanent residence in Thailand (cited in Nakavachara and Rogge 1987, 279).

Thailand has accordingly extended the right to permanent settlement to a very small number of the persons who have sought refuge in the country since 1975.[9]

For many refugees a return to their home country is the ideal, and once conditions permit, 'voluntary repatriation' provides an important solution to their plight. Such movements may be managed by outside agencies, but in many cases the movements are spontaneous and unregulated reactions to a change of circumstances in the country of origin. Thus, for example, changing political events in Chad between 1981 and 1983 led to the successful repatriation of almost all the 22,000 refugees from Chad who had sought asylum in Sudan (Rogge 1985, 181). Examples of this sort also demonstrate how important the provision of temporary asylum may be in situations where it seems likely that refugees will soon be able to return to their countries of origin.

The provision of aid has been another way the world community has sought to help refugees and the countries that offer asylum. Considerable efforts have been needed simply to meet the immediate emergency needs of refugees for medical care, food and shelter. Thus, out of a total expenditure of U.S. $421 million in 1985, the UNHCR spent 59 per cent of its budget ($249 million) on relief and other assistance to refugees. Only after these needs have been met is it possible to foster sustainable development projects that may enable refugees to support themselves and ease attempts at integration in areas of asylum or resettlement. The International Labour Organization has been active with projects to foster self-sufficiency among refugee groups in Sudan and Central America, while the UNHCR spent $140 million or 33 per cent of its total budget, on local settlement projects (including income-generating activities) in 1985 (UN 1986, Annex 1; Harker 1988). At a national level, Canada contributed U.S.$31.4 million to international refugee agencies in 1987, or $1.21 per Canadian, a figure well below Denmark's per capita contribution of $5.94 (a total of $30.3

million); these figures compared with the United States' contribution of $226.3 million or $0.93 per capita (USCR 1988, 33-34).

Longer-term goals are to foster economic development so as to reduce the poverty that causes refugee movements and enable the economies of countries of asylum to develop. As one example, the concept of linking refugee aid and general development projects in order to minimize the burden on asylum countries was agreed on at the International Conference on Assistance to Refugees in Africa (ICARA II) in 1984. Increasingly, activities such as the World Bank's Programme of Action Towards Sustained Development in Sub-Saharan Africa are taking into consideration the need to integrate refugees into their development strategies (UNHCR 1985a, 15-17; Smyser 1987, 69-73; Harker 1988).

Aid programs must not always be seen as straightforward attempts at solutions, however, for as Victor Malarek has argued,

> Today, there is a very real danger that the international consultative process will result in even more restrictive measures, with the Third World being expected to carry the burden while the West appeases its conscience by putting a little money into aid programs (1988, D3).

Indeed, such aid programs may represent 'cheap' alternatives to the cost of resettlement in third countries. Estimates by the U.S. Coordinator for Refugee Affairs suggest that the United States planned to spend $683 million on refugee resettlement in that country in 1987, while West Germany currently spends more than 2 billion marks a year (U.S.$1.1 billion) to support refugees, pending a decision on whether they are eligible for asylum (Smyser 1987, 37; van de Kaa 1987, 41).

Arguing that an increasing number of refugees seeking asylum has put intolerable pressure on their countries, some states have endeavoured to deter asylum-seekers by restricting their access or preventing their arrival. The increasing number of refugees worldwide and the increasingly integrated nature of global communications and transportation have served to exacerbate such countries' fears while providing a rationale for their practices.

Several countries provide illustrations of these restrictive measures. The idea "that Europe has somehow been invaded by a sudden massive influx of new arrivals from third world countries posing as refugees, who are in reality only economic migrants" has prompted the formulation of increasingly restrictive refugee policies in that region (European Consultation on Refugees and Exiles 1985). Indeed, the objective of the refugee-receiving nations of Europe -- which has been to attempt to contain or "regionalize" refugee problems, that is, to keep those in need of protection and solutions within their regions of origin (Goodwin-Gill 1987) -- has been pursued by a variety of restrictive means, including the imposition of visa requirements; sanctions against airlines that transport inadmissible passengers; prohibiting employment or limiting social benefits to asylum-seekers; accelerating the status determination process; and removing asylum applicants to some other country deemed to be responsible for judging the asylum request (*Refugees* December 1987, 34).[10]

In commenting on this situation, Amnesty International has noted that "governments have become increasingly restrictive in granting asylum in the face of growing refugee

numbers and deepening economic problems" (Amnesty International 1987, 5). Recent press reports have noted that

> the doors of the hope are inexorably closing, especially in Western Europe, where country after country amended legislation to pinch the right of asylum. These countries -- West Germany, Switzerland, Britain, Sweden, Denmark, France, Belgium and the Netherlands -- also implemented streamlined procedures for the swift deportation of those ruled not to be genuine refugees (Malarek 1988, D1).

Indeed, it is worth noting the limited extent to which many European countries subscribe to policies of resettlement; they argue that they are not countries of immigration and for that reason cannot offer places (Goodwin-Gill, personal communication, August 1988).

The behaviour of West Germany has been important because that country receives more applications for asylum than any other country in Europe. In the past, most asylum-seekers from the Middle East entered West Germany on trains crossing the border between East and West Berlin, where there are no inspection facilities or personnel. Throughout 1986 the West German government requested the assistance of East Germany in curtailing this activity. On October 1, 1986 East Germany announced that foreigners would be allowed to pass through East Germany only if they had an entry visa for another country. In 1986 West Germany also imposed its own measures to curtail asylum-seekers. In August it was announced that airlines who brought passengers without visas into West Germany would be fined up to $1,000 per passenger. Persons from Lebanon, Syria, Ghana, Pakistan and Bangladesh were also told to acquire transit visas prior to stopping over in West German airports (USCR 1987, 57; 1988 54).

By the end of 1986 several more far-reaching amendments to the existing asylum law were passed by the German parliament. The most significant change affected refugees who have spent some time in a third state before entering West Germany. Any foreigner who has spent longer than three months in another state without threat of political persecution may be refused entry at the West German border. Further, the amended Law on Asylum Procedure states that an application for asylum is manifestly unfounded if it is apparent in an individual case that a foreigner is present in Germany solely for economic reasons or to avoid a general state of emergency or armed conflict. Applicants for asylum must now wait five years to receive their first work permit. Finally, airlines will face stiffer penalties; companies may be instructed to bear the cost of returning an asylum-seeker who arrives by air without proper documentation. This penalty may be enforced up to three years after the arrival of the asylum-seeker in Germany (*Zar Actuell* 1987).

In the wake of the 1986 changes to asylum procedure, border officials were apparently rejecting asylum-seekers at Frankfurt airport and returning them to 'safe' third countries -- Afghans and Iranians to Pakistan, Ethiopians to the Sudan, and Afghans and Tamils to India. However, following legal appeals by some rejected applicants, the higher courts in Germany ordered this practice stopped (USCR 1988, 54). Nevertheless, the 1986-87 round of restrictive measures appears to have met with some success: only 57,379 applications were filed in 1987, as compared with 99,000 in 1986 and 73,832 in 1985 (Rudge 1987, Table 1, 8; USCR 1988, 54).

Beginning in May 1985, the United Kingdom introduced several measures intended to reduce the number of applications for asylum. Since that date, Sri Lankans have required visas -- the first time the British government has placed such a requirement on citizens of a Commonwealth country. The visa requirement was introduced in response to an influx of Tamils seeking refugee status because of ethnic violence in Sri Lanka. At present, there are visa requirements for everyone originating from the Indian sub-continent and West Africa (USCR 1987, 58; Amnesty International 1987, 5).

The most significant action to deter asylum-seekers was taken in May 1987 with the introduction of the Immigration (Carriers' Liability) Act. The Act was made retroactive to March 4, 1987 and imposes heavy fines on airline and shipping companies transporting people without proper visas or documentation. The Act was an apparent response to an increase in the number of asylum applications received at British ports of entry, despite more rigorous visa requirements. Home Secretary Douglas Hurd noted at the time the Carriers' Liability Bill was introduced in the House that stricter visa requirements had not prevented people arriving without visas and resisting immediate return to their country of origin by claiming asylum. In the House debate on the Bill, opposition critics claimed the legislation failed to take account of the predicament of genuine refugees who may not be able to acquire the necessary documents. In the aftermath of the Bill's passage, there was an immediate reduction in the number of port asylum applications received each week, from an average of about 60 a week to an average of 25 a week between 5 March and 26 April 1987. During the same period air and shipping lines incurred 600 fines of 1,000 pounds sterling under the new legislation (*Refugees* 1987 July, 15-16).

These restrictive measures have not passed unopposed. Most recently the deportation of asylum-seekers who are refused refugee status has been a source of both public debate and judicial review. In February 1987 the British Home Office sought to return 58 Tamils upon their arrival. Following their refusal to board a plan at Heathrow Airport, the Tamils were granted a temporary reprieve by a High Court order, on the grounds that procedures may not have been followed properly. A voluntary agency in the U.K. argued successfully before the court that the asylum-seekers should have been allowed access to an advisory service under the terms of an agreement between the U.K. and the United Nations (*Refugees* 1987 April, 22). In May 1987 the Home Office withdrew a threat to deport 20 asylum-seekers from Iraq on the grounds that they had transited through the Federal Republic of Germany. Lawyers acting on behalf of the asylum-seekers won an injunction preventing the deportation, as well as a judicial review of the treatment the asylum-seekers received and the procedure for status determination. Lord Justice Woolf of the High Court later stated that when asylum-seekers are refused refugee status and scheduled for deportation they should be given written notice of their removal from the U.K. and told why permission to remain has been refused (*Refugees* 1987 July, 16).

Countries have tried to counter the so-called magnet effect by making conditions for refugees so difficult in the countries of asylum that few are tempted to go there. The closed camps of Hong Kong are but one manifestation of this approach; another is in West Germany, where refugee claimants are sent to special camps and not permitted to work for at least two years (Malarek 1988, D1; USCR 1988, 46-47). Thailand's policy of "humane deterrence" provides another example.

The Thai policy was adopted in 1981 and barred newly arriving refugees from interviews with countries of resettlement. The policy was intended to deter new refugees and

was directed primarily at the Vietnamese boat people, on the assumption they would choose other destinations over Thailand. Ultimately, all newly arriving refugees were confined to austere, prison-like camps and were to be ineligible for resettlement until the backlog of earlier arrivals was cleared. However, the policy appears to have done little to reduce the flow to Thailand (Nakavachara and Rogge 1987, 281). By late 1987, 140,000 refugees lived in 12 closed camps where "the only hope of freedom is resettlement in a western country. What amounts to life imprisonment is the grim alternative" (Johnston 1988).

Relocation and repatriation have also been adopted as deterrents. Thailand's policies toward the different ethnic refugee communities have varied in part on the basis of each group's prospects for resettlement or repatriation. Khmer refugees have not enjoyed a particularly high rate of resettlement (67 per cent, as compared to more than 90 per cent for Vietnamese, 77 per cent for lowland Lao and 57 per cent for hill tribe Lao). Shortly after Kampucheans began to enter Thailand in 1979, 42,900 Khmer refugees were forcibly relocated across the Kampuchean border, in an exercise aimed at deterring others from seeking refuge in Thailand. Although there have been no further reports of large-scale expulsion, voluntary repatriation of Khmer continues to be strongly promoted by Thai authorities (Nakavachara and Rogge 1987, 275).

Thailand has also made efforts to distinguish between legitimate political refugees and economic migrants drawn by the 'pull' factors of resettlement in the West and the relatively dynamic Thai economy, and to take action to deter economic migrants. An individual screening process has been applied to all Laotian refugees since 1985; those found not to be *bona fide* refugees are returned to the border for eventual repatriation. UNHCR staff act as observers in the screening program. Of the 10,000 or so highland and lowland Laotians who have been interviewed by Thai border officials since 1985, 2,400 have been screened out and await return to Laos. On October 30, 1987 the first nine people from this group were returned home, after approval was obtained from the Laotian government (USCR 1988, 53).

Australia and Mexico provide two other examples of countries concerned about the magnet effect. In 1982, in the wake of international debate about the significance of the pull factor in attracting economically motivated individuals away from their homelands, the Australian government acted to speed the process of status determination (Cullen 1983, 37). A revised application form was developed, with the onus of showing a good claim to refugee status shifted more onto the applicant. The interview format was shortened, and the Determination of Refugee Status Committee developed criteria for rejecting applications that are manifestly ill-founded. The latter definition applies if there is no appearance of a claim to a well-founded fear of persecution (Goodwin-Gill 1983, 170).

In the last decade, Mexico has been faced with a mass influx of Central American refugees and has been forced for the first time to commit significant amounts of scarce resources to implementing its refugee policy. That policy has been summarized by one author as follows:

> (a) Mexico does not recognize the Central American immigrants as political refugees; (b) nonetheless, Mexico allows those fleeing the violence in Central America to remain within its territory; (c) Mexico does not encourage refugees to come and, in fact, discourages future refugee migrations by making living conditions for the refugees precarious; and, (d) overall, Mexico

> wants to keep a low profile toward the refugees and discourages publicity about either the refugees or the government's policies toward the refugees (Ferris 1987, 163).

Thus, prevailing policy in Mexico defines the vast majority of Salvadorans seeking refuge in Mexico as economic migrants, and only a few are granted asylum. The majority enter illegally or allow their tourist visas to expire and become 'irregulars'. As such they are not eligible for humanitarian refugee assistance; because they are illegal aliens they are not permitted to work and are subject to deportation if arrested. In 1986 the Mexican government reported deporting thousands of Central American aliens without documents; the majority were believed to be Salvadorans (USCR 1988, 65).

Beyond such measures, a number of countries have taken steps to prevent large groups of asylum-seekers even reaching their borders to claim refugee status. Perhaps the most well-known of such preventive measures is the program of 'interdiction', or interception on the high seas by the U.S. Coast Guard, of ships containing undocumented aliens. The program works in this manner: if there is evidence that an offence is being committed against U.S. immigration laws or those of another country with which the United States has an arrangement to assist, the aliens will be returned to the country from which they came. The program commenced in September 1981, and in that month the United States entered into such an arrangement with Haiti -- the only such arrangement the United States has sought. By February 1988, more than 12,000 Haitians had been intercepted, only two of whom were granted asylum in the United States. It is estimated that half of those who leave Haiti perish at sea. The number granted asylum has been so low because American immigration authorities presume the Haitians to be economic migrants, not refugees. The conditions under which Haitians are interviewed on board Coast Guard ships -- without lawyers or leave to appeal and, until recently, with uniformed Haitian naval officers on board to oversee the operation -- have made it hard to disprove this presumption, despite Haiti's record of human rights abuse (Silk 1986, 24; Amnesty International 1986, 164-168; 1987, 6; 1987, 173-177; Frelick 1987a; 1988, A7).

The United States is not alone in adopting such preventive measures. In early 1988 a significant revision of Thai refugee policy evoked international condemnation and marked the beginning of a new crisis for the Vietnamese boat people. On January 27 Thailand announced that asylum would no longer be granted to Vietnamese boat people trying to land on the country's east coast. The announcement was in response to a dramatic increase in arrivals during the previous year. In 1987 11,195 boat people entered UNHCR-assisted camps in Thailand, almost triple the number of 1986 arrivals. At the time of the policy announcement the Royal Thai government began pushing boats back into Kampuchean waters (*Refugees* 1988 March, 7). In early February 1988, the Thai government announced its intention to expand these preventive measures and "push back all people fleeing other countries in Indochina" (*The Ottawa Citizen* 1988, A16). It is significant that Thailand's Interior Minister, General Prachuab Suntrangkun, used U.S. policy to legitimate Thai action:

> I would like to emphasize that Thailand is carrying out measures to prevent illegal immigrants from entering this country the same as the United States uses methods to prevent people from illegally entering that country (*The Ottawa Citizen* 1988, A16).

A senior official of the Thai foreign ministry responded to Canadian criticism of their policy by asking the Canadian ambassador, "What has been the reaction of the Canadians to the Tamils and the Sikhs arriving illegally on your shores?" (Johnston 1988).

Thailand's revised policy immediately drew protests from the United States and from the United Nations High Commissioner for Refugees. Canada subsequently undertook a diplomatic initiative to give the Thais time to reconsider their policy. In late February 1988 the Thai government had reportedly ended the pushback policy and was allowing groups of refugees to land (*The Toronto Star*, 1988). However, UNHCR officials have expressed concern that withdrawal of the pushback policy has not been communicated to all local authorities in Thailand. The UNHCR has reported that boats were still being pushed back in March 1988 (*The Globe and Mail*, 1988).

In a third example, the Australian government has adopted restrictive measures in response to public pressure to reduce the number of spontaneous arrivals in the country. One of the objectives of the Immigration (Unauthorized Arrivals) Act of 1980 was to prevent or punish the act of carrying to Australia large numbers of asylum-seekers in boats specially fitted out for that purpose, as has frequently happened in Southeast Asia. Provision is made for penalties up to $100,000 and ten years imprisonment. It is understood that prosecutorial discretion would be exercised favourably on behalf of ships' masters responsible for the purely humanitarian action of rescuing refugees at sea. Shortly after the Act came into force, illegal immigrants arrived by boat, having been lawfully resident in Hong Kong and Taiwan. Those on board, though originally from Vietnam, were subsequently deported to their country of last residence (Goodwin-Gill 1983, 167, note 5). With specific regard to Vietnamese arrivals by boat, the Australian government will no longer process refugees rescued by 'mercy ships' operating in the South China Sea. The government has argued that it is no longer necessary for Vietnamese to enter Australia by the dangerous and illegal sea route, since the Vietnamese government has agreed to an Orderly Departure Program of international resettlement. Indeed, the Australian government maintains that organized rescue-at-sea activities have provided an incentive to leave Vietnam (USCR 1987, 51).

Other methods have also been devised to prevent refugees reaching asylum. Between 1986 and 1987, several countries established special procedures under which persons who reached their airports were not considered in law to be on their sovereign territory. They could then be expelled without the necessity of a specific expulsion order. Thus, Switzerland created a new 'international zone' around Cointrin Airport in Geneva, and Belgium introduced special procedures at Brussels airport (Smyser 1987, 97).

Finally, the search for solutions has involved considerable international co-operation and the creation of international agencies. Thus, in the African context, the principle of burden-sharing (agreed upon in 1967 at a conference in Addis Ababa) would allow countries with a disproportionate number of refugees to call upon other African states to assist by providing relief or additional asylum space (Smyser 1987, 67).

In Europe there has been growing recognition that restrictive measures have not prevented the arrival of asylum-seekers but have simply shifted the burden from countries with relatively restrictive policies to those with a more liberal approach. Consequently, governments and non-governmental agencies are attempting to discuss asylum issues at a European level and to work toward harmonizing procedures (Refugees 1987 December, 34). In 1985 the UNHCR began a series of "Consultations on the arrivals of asylum-seekers and

refugees in Europe" with representatives of 55 countries and various NGOs. The Parliament of the European Community commissioned an investigation of the problem of asylum from Mr. H.O. Vetter, MEP in 1986 and debated his report in 1987. It is also worth noting that the European Consultation on Refugees and Exiles sponsored a seminar in Zeist, the Netherlands, between 16 and 18 January 1985. The seminar was attended by 36 participants representing 24 non-governmental agencies from 9 European countries and by 14 observers from international organizations (e.g., the UNHCR, the Council of Europe, the Intergovernmental Committee for Migration) and North American NGOs. The 1985 Seminar was designed as a follow-up to a seminar held in January 1982, and a report called "A Refugee Policy for Europe" was published by the group with the support of 40 European NGOs. It remains to be seen whether European states will have the political will to harmonize their policies and, if so, what direction they will take.

In the global context, lack of protection lies at the heart of the refugee problem, and international law has responded by substituting its own protection via international agencies and state obligations. International agencies must play the more important role; because the individual is not considered to be a subject of international law, state obligations concerning refugees are owed not to individuals but to the international bodies charged with refugee protection (Sadruddin Aga Khan 1981, 8, 17; Goodwin-Gill 1983, 134).

The principal agency is, of course, the UNHCR, whose mandate states party to the Convention or Protocol have agreed to facilitate. The UNHCR was also to strive for durable or temporary solutions to enable refugees to resume a normal life, ideally back in their own countries or elsewhere if this was not possible (Capelli 1988). Protection, assistance and the search for solutions have formed the core of its activities and have continued to be central to the UNHCR's mandate as it has been extended for successive five-year periods. By 1987, the UNHCR was providing protection and assistance to "refugees and externally displaced persons in a refugee-like situation" in more than 90 countries (Capelli 1988).[11]

Beyond these activities, the UNHCR has become involved in a variety of other pursuits, all of which are a logical extension of its mandate, but are less well known. Thus, for example, the situation of unaccompanied refugee minors (individuals under 18 years) has posed difficult questions: countries of asylum do not want to assume guardianship, while repatriation or resettlement runs the risk of *refoulement* or family separation. Moreover, there is some question whether minors could, strictly speaking, be 'refugees'. In the face of these uncertainties, in 1979 the UNHCR opted for placing unaccompanied refugee minors in countries that agreed to accept them for foster care only, because this does not preclude eventual family reunion. To locate the parents, a continuing program for tracing family members was also implemented. Such action by the UNHCR, while not without its problems (especially for those for whom permanent adoption would be the better course), has been important in ensuring that the needs of such minors are not overlooked (Pask and Jayne 1983-84, 541-53; 1984, 286-88).

Other United Nations agencies are also involved in assisting refugees, often in close co-operation with the UNHCR. Thus, the World Food Programme has met the basic food needs of refugees in many parts of the world and recently has assumed the role of food aid co-ordinator in Somalia. The United Nations Children's Fund has supported worldwide programs for refugee children, and the World Health Organization and the Food and Agriculture Organization have been involved in refugee assistance in Pakistan. The World Bank, the International Labour Organization and the United Nations Development Programme

have particpated in the search for durable solutions, in collaboration with the UNHCR, by preparing plans to promote local economic development thereby enabling refugees to support themselves (UNHCR 1985, 15-17; Harker 1988).

The work of other agencies, including the International Committee of the Red Cross, the Organization of American States and non-governmental organizations such as Amnesty International, should not be forgotten (Surbeck 1988; Caminos 1988; Amnesty International 1986, 12; 1987, 2-8; Goodwin-Gill 1988). Nor should the role of the General Assembly of United Nations be overlooked, for this body requested the work of the Group of Governmental Experts and sanctioned the creation by the Secretary-General of an Office for Research and the Collection of Information. The hope is that this office will improve the international capacity to predict refugee flows, thereby helping the international community anticipate needs and develop strategies to prevent refugee movements by attacking identified causes (Gordenker 1986, 188; Capelli 1988; Drüke-Bolewski 1988).

This examination of the world's current responses to refugee issues serves to illustrate the great range of approaches and the scope of recent changes. It is clear, for instance, that a great variety of restrictive practices have been developed within the last decade. Indeed, it is of particular interest that many of these restrictions were introduced in this period, for they thus pre-date the restrictions in Canada's new laws and the visa restrictions Canada has recently introduced. Moreover, this examination has illustrated that restrictions have become very severe in certain countries and have produced situations that are perhaps far worse, from the prospective refugee claimant's point of view, than that outlined in the new Canadian legislation. Clearly, if other countries' practices are any guide, their behaviour suggests a potential for restriction that Canada has not yet contemplated officially. Finally, this section has demonstrated the considerable generosity of several countries concerning the granting of first asylum; such behaviour offers a vital service in the protection of those fleeing persecution and a sobering contrast to the restrictive practices of the West.

Part Two: The Canadian Context

5. The New Canadian Legislation

On July 21, 1988, royal assent was given to legislation originally introduced in Parliament as Bills C-55 and C-84. This legislation radically overhauls Canada's inland refugee determination system -- that is, the way Canada grants refugee status to asylum-seekers arriving at its borders -- and introduces new controls governing the access of asylum-seekers to that system. It is the purpose of this section briefly to summarize the two new acts as a background to discussion.

5.1 The Refugee Status Determination System

In commenting on the refugee status determination system as it existed prior to the 1988 legislation, one authority noted that the "system has virtually no controls on access. That is, almost anyone can make a refugee claim and remain in Canada until it is adjudicated" (Young 1987a, 2). It is the purpose of the new legislation, originally introduced as Bill C-55, to change this by controlling access and not allowing all claimants to remain in Canada until their cases are decided, and to introduce a speedy refugee determination system. These moves are designed to reduce the number of ineligible people making claims, to prevent individuals claiming refugee status simply because this allows them to remain in Canada during the determination process, and to prevent the build-up of a back-log of claims, which in the past has allowed ineligible individuals to remain in Canada until determination has been completed. Overall, the intention is to deter people from making claims.

Under the act, a new body known as the Immigration and Refugee Board is set up to handle immigration concerns. The Board has two divisions, the Convention Refugee Determination Division and the Immigration Appeal Division. The former hears refugee claims, and its members sit with adjudicators to decide questions of access to the new determination system. Up to 65 full-time members may be appointed, and if the workload requires, additional part-time members can be recruited. The Division is not a court of record; instead members have the same powers as commissioners under Part I of the Inquiries Act. The Appeal Division replaces the previous Immigration Appeal Board (IAB), although the former is somewhat smaller in size. The IAB consisted of up to 50 members, whereas the Appeal Division consists of up to 30 permanent members, with temporary members appointed if required. The Appeal Division, unlike the Refugee Division but like IAB, is a court of record (sections 59-78).

Under the new law, access to the refugee determination system is controlled by a two-stage screening held before a presiding immigration officer (the "adjudicator") and a member of the new Refugee Division. As the act states,

> the adjudicator and the member shall determine whether the claimant is *eligible* to have the claim determined by the Refugee Division; and if either the adjudicator or the member or both determine that the claimant is so eligible, they shall determine whether the claimant has a *credible basis* for the claim (section 48(1)(b) and (c), emphasis added).

Thus, at the first stage, which the government estimates can be completed in between three and seven days (Young 1987a, 2), claimants will be denied access to the determination system if they are not eligible to make a claim. Ineligible claimants are defined as those who

(a) have been recognized as a Convention refugee by another country and have a valid travel document (unless they are being persecuted in that other country);
(b) come from a safe third country and are returnable there;
(c) are making a repeat claim;
(d) have already been determined to be a Convention refugee;
(e) are defined by the Minister as a security risk; have criminal records in Canada; or, are members of inadmissible groups described in Paragraph 19 of the *Immigration Act*, 1976 (such as war criminals);
(f) have been issued a departure notice but have not left Canada;
(g) fail to claim refugee status at the beginning of an inquiry (section 45(2), 48.01).

Young argues that the "access criterion which could affect the most claimants is that of the safe third country". Claimants who have come to Canada from such a country will be returned, if the safe third country permits, or if the claimants have a right to have their claim determined there (section 48.01(b)). The act defines a safe third country as

> any country that complies with Article 33 of the Convention either universally or with respect to persons of a specified class of persons, having regard to whether the country is a party to the Convention, the country's policies and practices with respect to Convention refugee claims and the country's record with respect to human rights (paragraph 115(1)(r)).

Individuals who are neither returnable to a prescribed safe third country nor are ineligible on any of the other grounds listed are then considered to be eligible to have the credibility of their claim determined by the adjudicator and the member of the Refugee Division. This constitutes the second stage of the screening process. The act does not provide a definition of a credible claim but does instruct the decision makers to base their decisions on the evidence adduced at the inquiry "considered credible or trustworthy in the circumstances of the case", on the human rights record of the country the claimant has fled from, and on prior decisions already made concerning refugee claims of others from that country. Claimants rejected because of a lack of credibility are to be returned to their country of origin or to any other country that will receive them (sections 48(4), 48.01(6), 54). It should be noted that at the credibility stage of the screening the claimant's personal story of persecution is relevant (Section 48(3)).

At both stages of this screening process, reasons must be given for decisions, although they need not be written, and both decision makers must agree before rejecting a claim. If only one passes the claim that is sufficient for it to proceed to the next stage (sections 48.02(1), (2)). Claimants are permitted to have counsel, and proceedings are *in camera* and adversarial in nature, with full rights given to both the claimant and the Minister. A claimant who is denied access due to the system may apply to the Federal Court for leave to apply for judicial review. However, pending the Court's decision, the claimant will be deported (Young 1987a, 7).

Claimants who have been found to be eligible and to have a credible claim are then referred to the Refugee Division for a full oral hearing, and the adjudicator will make a conditional removal order. The proceedings are *in camera* before two members of the Refugee Division (although a member of the public may be allowed to attend if the adjudicator decides this will not harm the claimant). Proceedings are to be informal, expeditious and less adversarial than the screening process. Both the claimant and the Minister have the right to counsel, while the Refugee Division may use information it considers credible or trustworthy, as well as opinions derived from its specialized knowledge, in reaching its decision, provided that it first informs the Minister and the claimant of this and gives them an opportunity to respond. As at the initial screening, both members of the panel must be in agreement before a claim can be rejected, and in such cases written reasons are required (sections 69-71.3; EIC 1987b, Backgrounder B, 1).

Interestingly, although the Minister may present evidence, this is only with regard to the cessation and exclusion clauses of the 1951 Convention Relating to the Status of Refugees which, significantly enough, the act incorporates for the first time into Canadian law. Under the new law, the Minister can apply to the Refugee Division for a determination, before a panel of three of its members, that a person is no longer a Convention refugee on the grounds that the refugee obtained his or her refugee status by fraudulent means or misrepresentation, or that the refugee no longer needs protection. The latter situation may arise if the refugee acquires a new nationality, reacquires citizenship or returns to his or her country of origin, or if the reasons for the refugee's original fear of persecution cease to exist (sections 2(2); 71.2(2)).

An individual whose claim is refused by the Refugee Division hearing may apply to the Federal Court for leave to appeal the decision. In this case, unlike appeals against screening decisions, deportation will not take place until the Court has made a decision. The act stipulates that all leave to appeal applications will normally be decided by one judge, without the personal appearance of the parties concerned. There will be no appeal from this decision (Young 1987a, 7).

In tabling Bill C-55, the Minister of Employment and Immigration argued that the proposed legislation "ensures that refugee claims will be processed fairly and quickly. It will now take only months to process a claim -- not years". He argued that the bill proposed "a new, streamlined refugee determination system to replace a process that has become bogged down", a system, he argued, that "was never designed to deal with the growing number of claims or with the large number of claims to refugee status". Bill C-55, he concluded, "demonstrates our resolve to curb abuse" and "affirms this government's commitment to protecting genuine refugees who need our help" (EIC 1987b, Press Release, 1; EIC 1987b, Statement by the Minister of Employment and Immigration, 1, 2, 5). What Bill C-55 did not consider directly was the issue of the rising number of people arriving in Canada who would need, at least, to go through the first stages of the new process. Before long, however, the government was to confront that question as well.

5.2 Deterrents and Detention

Three months after the introduction of Bill C-55 the government announced a second piece of refugee legislation: the Deterrents and Detention Bill (Bill C-84). The catalyst for this action was the arrival of a boat containing one Turkish and 174 Sikh illegal immigrants who claimed refugee status (Senate Report 1987, 1738). As the government argued,

> The recent arrival of the Amelie in Nova Scotia, in the absence of government action, could provide an impetus for further fraudulent claims. The arrival of 155 Tamils in Newfoundland one year ago and the attendant publicity was quickly followed by a dramatic

> increase in the arrival of illegal aliens in Canada. It is imperative that Canada send a clear unequivocal message that we will not tolerate this form of abuse (EIC 1987d, Backgrounder A, 2).

According to the government, the intent of Bill C-84 was "to enable the government to act immediately to prevent further abuse of the refugee determination system in Canada". The bill was "designed to dovetail with Bill C-55", and its purpose was to strike "at the sources of the abuse by establishing tough deterrents to stop the increasing number of illegal aliens posing as refugees from entering Canada" (EIC 1987d, Backgrounder A, 1). Remarks made by the Honourable Gerald Weiner, then Minister of State for Immigration, and the Honourable Benoît Bouchard, Minister of Employment and Immigration, indicated that the bill was also seen as protecting the system for genuine refugees, preserving public support for refugee programs, and deterring "those who wish to profit by breaking our laws" and was designed to "deter those who abuse our generosity" (EIC 1987d, Press Release, 2). In other words, while Bill C-55 was designed to speed up and control access to the refugee determination system within Canada, Bill C-84 was designed to prevent fraudulent refugee claims being made in Canada by deterring the entry of fraudulent claimants to this country.

In terms of the context and need for this legislation, the government argued that the number of refugee claimants in Canada "has escalated", in recent years, from 1,600 claims in 1980 to 18,000 in 1986. This put such severe strain on the refugee determination system that Bill C-55 was necessary to streamline the process. However, this was not sufficient to deal with the rising number of claims because, according to the government, many of those arriving from abroad were not legitimate refugees. "Many of these claims have been fraudulent. Recent data show that an average of 70 per cent of claims are unfounded" (EIC 1987d, Backgrounder A, 2). As an initial response, the government had introduced control measures in February 1987 to stop this type of activity by putting visa restrictions on those leaving a number of countries. These measures reduced inflows from 1,200 per week in February 1987 to an average of 500 per week by August 1987. However, the government argued, "this number is still unacceptable and it is placing a severe strain on the refugee determination system" (EIC 1987d, Backgrounder A, 2). To combat this situation, Bill C-84 was introduced on 11 August 1987 and received royal assent on 21 July 1988.

This legislation contains four sets of measures. The first two are aimed at detering transportation companies that bring undocumented people into Canada and smugglers who endeavour to do the same. The second two enable the government to detain people who arrive without proper documentation until their identities can be established and to remove people who pose a criminal or security threat to Canada (EIC 1987d, Press Release, 1). It is also important to note that the act creates new offences connected with aiding the arrival of undocumented persons in Canada and establishes new powers of search and seizure and of mandatory detention. The detailed provisions of this legislation repay a brief examination. In terms of action against smugglers, the act

(1) increases the maximum penalties for smugglers and their accomplices to $500,000 and prison terms of up to 10 years (section 95.2);
(2) imposes penalties for the disembarkation of passengers at sea for the purpose of illegal entry into Canada (section 95.3);
(3) provides power to direct vessels suspected of carrying persons who are attempting to enter Canada in contravention

of the immigration law, once Convention refugees on board are brought to Canada, not to enter the internal waters or territorial sea of Canada; or, if they have done so, to direct such vessels to the nearest port of disembarkation (section 91.1); and

(4) provides powers of search and seizure in respect of smuggling activities and to provide for the forfeit of vehicles used by smugglers (section 103).

These measures are designed specifically to attack two recent phenomena: the smuggling of large groups of individuals and the potentially hazardous transportation of such people by sea. The measures also "penalize those seeking to profit by preying on the hopes and circumstances of those wanting to come to Canada" (EIC 1987d, Backgrounder B).

However, as the government recognized, since the vast majority of undocumented individuals arrive at Canadian ports of entry on scheduled carriers, action was needed to deter transportation companies from carrying undocumented persons into Canada. "One of the most effective deterrents to illegal arrival is the careful scrutiny of documents at the point of departure", and the legislation was designed to encourage such vigilance (EIC 1987d, Backgrounder C). Specifically, the act provides for

(1) increased fines for transportation companies that bring undocumented people into Canada. Fines will be increased from $2,000 to $5,000 per person (section 98.1); and

(2) regulations to grant authority for transportation companies to hold documents of people travelling to Canada and to show these documents to the government to confirm the identity and itinerary of persons seeking entry to Canada (section 115(1)).

In terms of the undocumented individuals themselves, the act

(1) expands government powers to detain undocumented arrivals until their identity can be established;

(2) empowers the senior immigration officer to order detention of such individuals for up to seven days; and

(3) extends detention (if this detention is certified by the Minister as necessary to establish identity) for as long as is needed -- provided that after every seven days the adjudicator is satisfied that the government is making reasonable efforts to establish the identity of the individual (section 104.1).

The government argued that these steps are necessary to deter "large influxes of bogus claimants" and to prevent individuals from destroying their identity documents prior to arrival in Canada, thus facilitating security checks and refugee processing. The government estimated that Canada receives more than 500 people per month who destroy their documents prior to arrival and argued that these measures would reduce such numbers (EIC 1987d, Backgrounder D). Indeed, given that the legislation aims to prevent undocumented individuals boarding transportation, it would seem necessary also to deter individuals from destroying their documents once in transit.

Finally, the fourth set of measures contained in the act permits the removal of security threats. The legislation

(1) empowers the government to order the detention of persons who pose a security threat to the country or who have committed serious crimes; and
(2) denies such persons access to the refugee determination system and thus permits rapid removal from Canada (section 41).

Where the government has information that an individual poses a security threat, the Minister and the Solicitor General issue a certificate to that effect. The certificate constitutes grounds to detain the individual and prevent his or her access to the refugee determination system. The evidence in support of the certificate is reviewed by a Federal Court judge, with the individual concerned given a chance to be heard. If the judge is satisfied that the detained individual does indeed pose a security threat, the person is removed from Canada without recourse to the refugee determination system (section 41). The government insists that this removal will observe the requirements of the 1951 Convention and 1967 Protocol (EIC 1987d, Backgrounder E).

These measures provide a means for the speedy removal of security threats, preventing such individuals from abusing the refugee determination procedure. In supporting this rationale for these measures, the government feels the new law is necessary to counter legal developments since the 1976 Immigration Act. These have made it increasingly difficult, the government believes, to remove individuals rapidly or to prohibit their access to the refugee determination system. This much is clear from the following extract published by Employment and Immigration at the time of the tabling of Bill C-84.

> Prior to the Canadian Charter of Rights and Freedoms and the *Singh* decision, there was a procedure under the Immigration Act for the issuance of certificates that permitted the government to detain and remove people deemed to be a security threat. With the coming into force of the Charter and consequential changes to legislation, this procedure became lengthy and cumbersome, allowing persons known or suspected to be security threats to remain in Canada for long periods of time. Under current law, any person, regardless of their record, must be allowed to make a refugee claim and carry that claim through all levels of appeal before the government can order deportation (EIC 1987d, Backgrounder E).

The two new laws constitute the government's revision of Canada's refugee determination system and provide a clear statement of Canada's new refugee policy. It is necessary now to consider the developments that brought refugee policy to this point and to consider the debate the new laws have provoked.

6. The Evolution of Canadian Refugee Policy

6.1 Introduction

Since its beginnings as a nation, Canada has provided asylum for individuals who would today be classified as refugees, but it is difficult to present a detailed picture of these early flows. The

United Empire Loyalists and the Doukhobhors are perhaps the most familiar examples of groups that fled to safety in Canada, but it should not be forgotten that many former slaves found sanctuary in Canada after the United States passed the Fugitive Slave Act, and many Mennonites fled to Canada from Russia in the 1870s. Indeed, this latter group were the first non-British group to receive direct financial assistance from the Canadian government. However, the overall numbers involved in these early refugee movements were small and, because refugees were not distinguished from other immigrants, difficult to measure. Even if it is assumed that all immigrants from Central and Southern Europe between 1933 and 1944 were refugees, the total would amount to only some 28,000 individuals (Dirks 1977, 22-42, 98). Only after the end of the Second World War does it become possible to examine in detail the flow of refugees to Canada. Indeed, this coincides with increased Canadian activity in this field, the establishment of Canadian refugee and humanitarian programs, and the increasing number of refugees worldwide seeking asylum.

The data suggest that 332,892 refugees and beneficiaries of humanitarian programs landed in Canada between 1947 and 1980 (Table 8). The predominant components of this movement were the post-war flow from Europe between 1947 and 1957 (some 186,000 individuals) and the Indochinese Refugee Program of 1979-1980 (60,049). These two movements accounted for 74 per cent of the total flow between 1947 and 1980. Thus, the intervening 20-year period, 1957 to 1978, saw only 86,693 individuals landed in Canada under refugee and humanitarian programs.

In terms of origins, between 1947 and 1980, 235,942 refugees arrived from Europe (71 per cent of the total flow), 69,337 from Southeast Asia (21 per cent) 9,169 from Africa (2.7 per cent), 7,025 from Latin America (2.1 per cent) and 11,419 from the Middle East/West Asia region (3.4 per cent). This period was thus one that was heavily influenced by a European bias -- originating in the post-war exodus, but continued by events such as the Hungarian and Czech uprisings. This bias was modified somewhat towards the end of the period by events in Southeast Asia, but other regions of the world were largely ignored.

Over the period 1981 to 1987, 140,869 individuals were admitted or landed in Canada under refugee and humanitarian programs (Table 9). Of this total, 116,775 were admitted as refugees (Convention refugees and members of the Designated Classes, either government- or privately-sponsored) and 24,094 (or 17 per cent of the total) under the humanitarian programs. The regional origins of this flow were discussed in Section 3; adding it to the flow for 1947 to 1980 produces a total refugee and humanitarian intake between 1947 and 1987 of 473,761 -- an average of 11,844 a year over the 40-year period.[12]

The number of Convention refugees landed in Canada by the inland refugee determination system was masked in the overall figures considered above, but the data presented in Table 9 allow the overseas and inland portions of Canada's refugee and humanitarian programs to be identified. As Table 9 shows, 6,333 refugees were landed by the inland system between 1982 and 1987, representing 6.2 per cent of all Convention refugee and Designated Classes admissions, or 5 per cent of all refugee admissions and humanitarian landings over the period. Thus, the overseas component represents 95 per cent of Canada's refugee and humanitarian influx between 1982 and 1987.[13]

In annual terms, the number found to be Convention refugees by the inland determination process rose almost consistently from 697 in 1982 to 1,442 in 1987. Although this number has doubled over the period, this should not detract from the fact that the increase represents only an additional 124 Convention refugees per year on average between 1982 and 1987.

Finally, in this brief introduction, it is useful to consider the influx of refugees (Convention refugees and members of Designated Classes) since 1980 relative to overall immigration to Canada (see Table 10). Three trends are apparent. First, there was a consistent decline in the annual number of immigrants landed between 1980 and 1985. Second, 1986 saw an increase in totals for the first time in recent years and saw the initiation of a new policy phase, reflecting a return to increased levels of immigration (Seward 1987, 2-3). Third, the 1982 restrictions on independent immigrants had marked effects on the relative sizes of the various immigrant classes and categories.

Against this backdrop, changes in the annual level of refugee landings in Canada take on added significance. From the high level of 1980, when the Refugee Classes accounted for more than 28 per cent (40,348) of all landings, the number of Convention refugees and members of the Designated Classes (the Refugee Classes) landed fell steeply to 14,980, or 11.6 per cent of all landings in 1981. In 1982 absolute and relative increases occurred, so that 2,000 more refugees were landed than in the previous year, but this level was not maintained in 1983 -- although the number of refugees as a proportion of total immigration actually increased because of the changes in overall immigration flows discussed earlier. Since 1984, the numbers landed under the Refugee Classes have risen consistently, from 15,343 in that year to 21,565 in 1987. However, because of increases in the overall level of immigration, the proportion of total immigration made up of refugee landings declined from 19.9 per cent in 1985 to 14.2 per cent in 1987.

Over the period 1980-1987, landings in the Refugee Classes consistently ranked third after Family Class and Other Independents, although differences between these groups fluctuated more widely than these rankings suggest. In 1983, for example, Family Class landings were almost 3.5 times landings in the Refugee Classes; in 1980 they were only 1.2 times as numerous, while in 1987, they were almost 2.5 times more prevalent.

The conditions under which the refugees mentioned here were admitted or landed in Canada have varied considerably in the last 40 years, and it is be the purpose of this section to consider the evolution of Canadian refugee policy up to 1988.

6.2 The Beginnings

Canada's refugee law has a comparatively recent origin. Despite its leading role in drafting the agreement, Canada did not accede to the Convention Relating to the Status of Refugees in 1951, nor did it develop comprehensive domestic legislation until the 1976 Immigration Act (Dirks 1977, 179-181).

Meanwhile, legislation promulgated in 1967 established a judicial body called the Immigration Appeals Board (IAB) to hear appeals from individuals ordered deported by immigration officials. This required the Board to determine whether the individual qualified as a *bona fide* refugee under the 1951 Convention, that is, whether persecution would follow if the individual was deported back to his or her own country of origin. As Dirks observed in 1977, the "board has been a small but significant factor in shaping Canadian refugee policy because of its ability to quash deportation orders" (Dirks 1977, 230).

In 1969, Canada took a major step in the development of its refugee law by signing the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. A statement issued by the Department of Manpower and Immigration at the time said that accession would not alter the generous treatment Canada had traditionally extended to refugees and went on to say

> Although Canada's treatment of refugees has been, as a matter of policy, in accordance with the letter and spirit of the international instruments for the protection of refugees, the act of acceding will denote official acceptance of the international standards for the protection of refuges and of the improved international and universal definition of the term 'refugee' (quoted in Dirks 1977, 182).

By signing these international agreements in 1969, Canada was indicating its intention to accept those individuals who qualified as Convention refugees and committing itself to adhere to international standards and obligations in the future operation of its refugee policy. It had taken Canada 18 years to accede to the Convention, but the country still had no formal refugee legislation governing how it would fulfil its new obligations.

Ratushny notes that the first formal steps to deal with claims for Convention refugee status were taken in 1973 when the departments of External Affairs and Manpower and Immigration established an interdepartmental committee to review refugee claims and make recommendations to the Minister. Appeals were possible to the Immigration Appeal Board, for this body had the power under the 1967 Act, amended in 1973, to determine whether the claimant was a Convention refugee and to grant special relief in other cases on compassionate and humanitarian grounds or because the claimant would otherwise suffer undue hardship (Manpower and Immigration 1976, 29; Ratushny 1984, 4).

Indeed, Hathaway observes that the 1973 amendments to the Immigration Appeal Board Act established the first statutory basis for refugee claims made from within Canada; however, this basis contained two flaws. First, it was wholly within the Board's discretion to grant or withhold landing in any particular case. As a result, there was no guarantee that refugees would receive protection from Canada. Second, because the refugee claim could only be raised on appeal rather than at the immigration inquiry itself, those persons whose claims did not go beyond the initial hearing had no means of demonstrating their refugee status (Hathaway 1988a).

A Green Paper, *The Canadian Immigration and Population Study*, tabled in February 1975, presaged a wholesale revision of Canadian immigration policy and acknowledged the need to include provision for refugee entry in any revised legislation. The Green Paper noted that the prevailing act had no reference to refugee matters, which were instead governed by regulations adopted over the past two decades and by the 1967 Immigration Appeals Board Act. As Dirks observed,

> Inclusions of regulations governing the entry into Canada of refugees in the new Immigration Act would have the desirable effect of placing government policy in statutory form. Much of the uncertainty present for so long in the area of refugee policy might thereby be reduced or even eliminated (1977, 253).

6.3 The 1976 Immigration Act and its Aftermath

Canada's ad hoc refugee policy was finally given a more permanent basis in a new immigration law, which came into force in 1978. One of the objectives stated in the Immigration Act, 1976 was

> to fulfill Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted (Immigration Act, 1976, section 3(g)).

The Immigration Act, 1976 introduced three important provisions. First, individuals who qualified under the Convention and Protocol were to constitute a separate class of immigrants within Canada's overall immigration program, to be known as Convention refugees . They were to be given top processing priority and exempted from the points system used for immigrant selection (EIC 1982, 7; Nash 1987, 7; Seward and McDade 1988, 5). The 1951 Convention definition of 'refugee' was adopted specifically adopted in the 1976 legislation to define this class (Ratushny 1984, 4; section 2 of the 1976 Act).

Second, the government was empowered to designate by regulation certain groups as special humanitarian classes whose admission was in accordance with Canada's concern for the persecuted and the displaced. The admission of members of such "Designated Classes" was to be made on grounds similar to those governing the acceptance of individual victims of persecution who qualified as Convention refugees (EIC 1982, 8). Regulations that came into force on January 1, 1979 established the three Designated Classes that still exist: the Self-Exiled Persons Designated Class, the Indochinese Designated Class, and the Political Prisoners and Oppressed Persons Designated Class (Hathaway 1988a).

These regulations have come to have considerable importance; the Designated Classes accounted for the majority of refugee landings between 1980 and 1987. With the large influx of Indochinese in 1980, the Designated Classes provided more than 97 per cent of all refugee landings, but that proportion fell to about 65 per cent during the period 1984-1988. The proportion of Convention refugees increased from a little over 2 per cent of all refugee landings in 1980 to 35 per cent in recent years, in part because of a decline in arrivals by members of the Designated Classes between 1980 and 1984, but also because of an increase in the number of Convention refugees landed. Nevertheless, over the period 1980-1987, Convention refugees represented less than a quarter of all refugee landings in Canada (EIC, Landed Immigrant Data System, unpublished tabulations, 3 November 1987, 26 April 1988).

The Immigration Act, 1976 also vested an overriding discretion in the federal cabinet to facilitate the admission of persons "for reasons of public policy or due to the existence of compassionate or humanitarian considerations" (section 115(2)). Administrative procedures based on this authority have been developed to permit individuals from countries experiencing an adverse domestic situation to benefit from the functional equivalent of temporary asylum and even to apply for permanent residence (Hathaway 1988a). These procedures, known as the Special Measures Programs, currently apply to individuals from Poland, El Salvador, Lebanon, Iran, Sri Lanka and Guatemala. In the first three years of their operation, Special Program landings fluctuated within the range of 4,000 to 5,000 (or, in 1982, 23.8 per cent of Canada's refugee and humanitarian influx). However, between 1985 and 1987 the number fell by 50 per cent to 2,600 in 1987 (or 11.1 per cent of the total influx), a fall exacerbated by new provisions brought in by the government between 1986 and 1987 (EIC, Policy and Program Development Branch, Refugee Affairs Division 1984, 39-41; 1985, 35-36; 1986, 62-63; 1987b, 42-43).

A third provision of the 1976 legislation was to allow private groups and organizations to participate in refugee resettlement through sponsorship agreements with the federal government (EIC 1982, 7-8). The federal government itself would sponsor a number of refugees each year, and an annual global refugee plan would establish allocations for the number to be admitted under

government sponsorship each year (Lanphier, 1981, 118-119; EIC 1982, 8; EIC Policy and Program Development Branch 1982, 1, 11; 1986, 58).

The law provided for the admission of refugees in two distinct ways: individuals claiming refugee status within Canada were subject to an inland determination system described below. Those chosen outside Canada, whether Convention refugees or members of Designated Classes, for resettlement here were to be selected as follows.

Convention refugees to be resettled within the total refugee plan allocation are selected by Canadian visa officers abroad (*Immigration Manual*, April 1986, Section IS. 3.24). Eligibility is based on four criteria.

(1) applicants must meet the Convention definition of a refugee;
(2) the immigration regulations restrict eligibility to persons who have not been permanently resettled;
(3) it must be ascertained that the refugee is not a member of one of the inadmissible classes established by the Immigration Act, 1976; and
(4) it must be determined that the person who seeks admission as a refugee is capable of "successful establishment in Canada" (Immigration Act, 1976, Section 19; *Immigration Manual*, April 1986, IS 3.24, the quotation is from 3.24(6)(a); Hathaway 1988a).

Refugees selected for government sponsorship receive interest-free travel loans, language training, counselling and financial assistance until they are permanently employed in Canada (Hathaway 1988a).

The Designated Classes are subject to a broadly similar selection procedure. Members of the various classes must be outside Canada and must be deemed capable of successful establishment in Canada. The major difference with this program is that applicants are not required to satisfy the Convention definition of a refugee. Provided they are not self-exiles, they need only be in refugee-like situations as defined by regulation (Hathaway 1988a).

The Immigration Act, 1976 also established, for the first time, a formal procedure for determining refugee claims in Canada. In doing so, the Act introduced a procedure that increased the rights of claimants while removing much of the discretion exercised by the Immigration Appeal Board. In summary, the process consisted of four distinct stages:

(1) the examination of the claimant by a senior immigration officer;
(2) the review of the transcript of that examination by the Refugee Status Advisory Committee and the recommendation of that body to the Minister;
(3) the actual decision by the Minister with respect to refugee status; and
(4) the possible re-determination of the Minister's decision by the Immigration Appeal Board.

Ratushny observes that the legislation formalized previous determination practice with some modifications. Most important claimants' rights were recognized in law and a number of specific safeguards were included, such as the right to a copy of the transcript of the examination and the right to retain counsel and to be informed of that right (Ratushny 1984, 4-5).

The process laid down in 1976 is worth considering in more detail, given the radical revisions enacted in 1988 and discussed above. Section 45(1) of the *Immigration Act*, 1976 contemplated that all claims to Convention refugee status (defined in section 2 of the Act) would be made at any time during the course of an inquiry conducted by an adjudicator under the provisions of the Act. When such a claim was made, the adjudicator, after finding that the claimant was in violation of the Act but before issuing a departure notice or making a removal order, was obliged to adjourn the inquiry to enable the person to present his or her claim to the Minister of Employment and Immigration. The original inquiry had then to be adjourned and an examination scheduled (Plaut 1985, 25-26).

The claimant would be examined under oath by a senior immigration officer concerning the claim to refugee status. A transcript was made of the examination and forwarded to the Minister together with a copy of the claim. The claimant had the right to be represented by counsel at this examination, to an interpreter and to a copy of the transcript (Immigration Act, 1976, section 45(1), (2), (3) and (6)). A reporter had to be accommodated at this examination, and an informal delay of seven days was allowed for the claimant to check the transcript (Ratushny 1984, 6).

The Minister then referred the claim and transcript to the Refugee Status Advisory Committee (RSAC) for consideration and advice. If the RSAC case review officer concluded that the case was "manifestly unfounded" as determined by the guidelines set down for RSAC's use, a summary of the case was prepared for review by the Committee (Plaut 1985, 26). The guidelines used by RSAC created four categories of "manifestly unfounded claims". These were

(1) claims that presented no evidence of any of the five essential criteria of the definition;
(2) claims where the evidence presented was so manifestly unreliable "that no reasonable person could believe it";
(3) claims made under Section 45 of the Act when the claimant had already submitted an in-status claim and the second claim presented no new information; and
(4) claims made by the spouse of a rejected claimant when the claim was based solely on the rejected spouse's claim (*Immigration Manual*, summary quoted in Plaut 1985, 199).

Certain safeguards applied in this consideration. No claims from traditional refugee-producing countries were treated as manifestly unfounded, nor was a claim automatically considered to be manifestly unfounded simply because it was from a country that normally did not produce refugees (Ratushny 1984, 6).

If, however, the case was not manifestly unfounded, the full transcript was considered by the RSAC -- although it should be noted that a Committee member could at any time request that the full transcript for even manifestly unfounded cases be put before the Committee (Plaut 1985, 26). In considering claims, the RSAC had to take into account the political considerations in the country in question. This information may have been known to Committee members through their own reading, experience with other cases, or from specific inquiries they might have initiated.

Under the Act, the Committee members did not see the claimant personally so they were unable to raise matters that might have appeared prejudicial but were not discussed during the examination of the claimant. An informal step was added to the procedure to allow the claimant to provide refutations; the examination could be re-opened and additional evidence presented or new issues raised (Ratushny 1984, 6).

A representative of the UNHRC was entitled to sit in on RSAC sessions, review claims and give an opinion. Although the representative had no vote, if he or she disagreed with the Committee, the case had to be reviewed personally by the Chairman (Plaut 1985, 26-27).

The RSAC then forwarded its recommendation to the Minister. Three courses of action were then possible. Under the first two, if the determination was positive, the inquiry had to be resumed to establish whether the person should nevertheless be removed because he or she was a serious criminal, terrorist or security risk (Ratushny 1984, 7).

If the claimant was determined by the Minister to be a Convention refugee and to be allowed the right to remain in Canada, a Minister's Permit under Section 37 of the Immigration Act was normally issued, authorizing the refugee to remain in Canada despite the finding of having violated the Immigration Act. The adjudicator would then conclude the inquiry by determining that the refugee was lawfully in Canada (Plaut 1985, 27-28).

Second, if the Minister concluded that the individual, though declared a refugee, should not be permitted to remain in Canada, the inquiry was resumed and the refugee might be subjected to a removal order. However, the refugee might appeal this decision to the Immigration Appeal Board (IAB) and then to the Federal Court of Appeal, with leave. It is important to note in this respect that section 55 of the Immigration Act, 1976 followed Article 33 of the 1951 Convention in guaranteeing *non-refoulement*; that is, refugees would not be returned to a territory where their life or freedom would be threatened except when they posed a threat to Canada's security (Immigration Act, 1976, sections 55, 72(2), 84).

The third possibility was that the Minister might determine that the claimant was not a Convention refugee. In this case, another informal procedure was followed before the decision was sent to the claimant: the claim was referred to the Special Review Committee (SRC), a committee of senior EIC officials that reviewed the claim on humanitarian and compassionate grounds (Ratushny 1984, 7). If the SRC gave the claim favourable consideration, a Minister's Permit was granted and the inquiry concluded as outlined above (Plaut 1985, 28).

If however the SRC did not come to a favourable conclusion, the Immigration Act, 1976 stipulated that an application to the Immigration Appeal Board (IAB) for re-determination of the claim could be made. Prior to the *Singh* decision, discussed below, the procedure for re-determination, as originally laid out in the 1976 Act, was for the claimant to complete an application and a declaration under oath, indicating the basis of the re-application and giving a summary of evidence and other material to be provided if a hearing were to be granted. All of this material was to be filed with the IAB (Immigration Act, 1976, section 70).

Having reviewed this material, the IAB determined whether the applicant had made a case for an oral hearing of the claim. If not, the IAB refused to allow the application to proceed to a hearing and determined that the applicant was not a Convention refugee. The applicant could apply to the Federal Court of Appeal for a review of this decision (section 71(2)).

If the IAB found that a hearing was warranted, however, the matter could be heard by a three-member panel of IAB. Such hearings were adversarial in nature, and the onus was on applicants to establish whether they were Convention refugees. The claimant, witnesses testifying on behalf of the claimant and the Minister's representative could be cross-examined. There was no appeal from IAB decisions concerning applications for re-determination, although the claimant might seek judicial review in the Federal Court of Appeal (Ratushny 1984, 7-8; Plaut 1985, 30).

The 1976 legislation marked an important point in the evolution of Canada's refugee policy. For the first time, Canada had recognized the need for a formal process for the admission of refugees and for a continuing admissions policy -- rather than one that operated in an ad hoc way. Canada's first annual global refugee plan was a result of these developments. When it was announced in December 1978, it included provision for an intake of 5,000 refugees from Southeast Asia during 1979 (EIC 1982, 18). Moreover, Canada had finally decided to adhere to international guidelines by including the UNHCR definition of Convention refugee in the legislation, by allowing UNHCR representation in refugee determination decisions, and by agreeing to abide by international principles, such as *non-refoulement* (see sections 2, 3(g) 4(2), 6(2) and 55 of the *Immigration Act*, 1976). In other words, the international law adopted by the world community to deal with refugees was now recognized in Canadian jurisdiction. As Julius Grey has argued,

> It does not take any liberties with the law to conclude ... that international law is in force in Canada, not because of any automatic application of it but because it was enacted into domestic law and no "clear derogation" was included (Grey 1988).

Beyond these intentions, the Act was designed to produce a refugee determination system that worked smoothly and efficiently. As the Department of Manpower and Immigration remarked in its explanatory notes on sections 45 to 47 of the legislation before it was passed into law,

> At present ... the formal refugee status determination process can begin only after a deportation order has been made; ss. 45 to 47 advance the process to a point before an order might be made, to reduce the tribulations of a person who may indeed be a refugee, and eliminate unnecessary work for the immigration service and Immigration Appeal Board (Manpower and Immigration 1976, 29).

However, the informal practices that developed to fill gaps in the 1976 law suggest that the aim of eliminating unnecessary work and reducing tribulations was not achieved. As Ratushny has observed,

> The process appears to be straightforward and relatively simple in design. Perhaps with a very small number of claims each year, it could operate effectively. However, the basic stages referred to above have necessitated additional procedural steps, creating potential "bottlenecks" which render the process susceptible to delay and abuse. Moreover, the refugee-determination process established by the Act lacks one basic component which would greatly enhance its procedural fairness. That is the opportunity of the person whose credibility is being assessed to be heard directly by the persons(s) making their assessment (Ratushny 1984, 5).

The 1976 law was modified several times after it took effect in 1978. In September 1980 the Minister of Employment and Immigration established a Task Force that produced a 1981 report entitled "The Refugee Status Determination Process" (Task Force on Immigration Practices and Procedures, 1981). The report made three main recommendations: first, that RSAC should be independent of immigration or external policy considerations; second, that the use of the Convention refugee definition should observe the spirit as well as the letter of the law; and third, that claimants be given an oral hearing as part of the primary determination stage. The report recommended that RSAC immediately provide oral hearings to the extent possible under the 1976 Act. However, it also added that

> The *Immigration Act* should be amended to replace the present determination process with a central tribunal which would hear and determine refugee claims. If such a full hearing process is established at the level of refugee determination, the concept of a re-determination should be eliminated (quoted in Ratushny 1984, 9).

The Task Force recognized that providing full oral hearings would be costly, but it argued that with the savings of a speedier process this need not present difficulties. By 1984, Ratushny was able to report that a new independent Chairman of the RSAC had been appointed and the RSAC physically removed from EIC. In terms of refugee definition, the Minister had issued new guidelines and insisted that the benefit of the doubt be given to claimants. In terms of oral hearings, on May 2nd, 1983 the Minister of Employment and Immigration announced the development of "pilot projects" in Montreal and Toronto to give claimants a form of oral hearing (Ratushny 1984, 9-10; Plaut 1985, 33, 45-46).

The pilot projects were organized to prevent any legal challenges. An RSAC member attended the examination under oath as a silent observer. Following the examination, the member conducted a separate interview with the claimant. The RSAC member then submitted a summary of the case together with a recommendation to the RSAC Chairman, who might agree and refer the recommendation to the Minister or might refer the case for review by the RSAC. Ratushny observed that "the pilot projects have already generated a number of valuable results." He stated that it had been possible to move many of the "clear" cases through the system much more quickly, while the number of "marginal" cases had been greatly reduced. The quality of decision making had also improved because RSAC members had greater certainty about their recommendations. Cases dealt with under the pilot projects were the subject of fewer adjournments than normally occurred. Finally, he noted that the length of the interviews by RSAC members was shortened -- perhaps because the quality of examinations by senior immigration officers was enhanced by the mere presence of the RSAC member as an observer (Ratushny 1984, 10).

Further developments occurred in 1984 and 1985. In December 1984, identification documents for refugee claimants were implemented. In January of the following year, job-specific employment documents were replaced with generic authorizations, and later in the year, the RSAC began to test the possibility of having "manifestly unfounded" claims fully reviewed by at least one Committee member (Plaut 1985, 46, 146, 151).

A year earlier, Ratushny had concluded that there was a limit to how far such modifications to the 1976 legislation could go in addressing the fundamental problems inherent in the law. Thus, he argued,

> as the recent report on *Illegal Migrants in Canada* has observed, further improvements and "streamlining" of the process are severely hampered by its legislative "straight-jacket" which rigidly specifies the steps which must be taken in processing claims. In recent years, it has been the subject of abuse by some claimants with little chance of success, who claimed refugee status in order to be permitted to remain in Canada while their claims were being processed. The laborious procedures imposed by the Act, together with a dramatic increase in claims, have created serious delays in the disposition of cases, with repercussions throughout our system of immigration enforcement (Ratushny 1984, 10-11).

In other words, even if the important matter of providing an oral hearing could be dealt with in the context of the 1976 Act (or an amended Act), the process itself as set out in the Act needed serious attention. The delays necessitated by the law were hampering the speedy resolution of legitimate refugee claims, enabling bogus claimants to remain in Canada for long periods before their claims were determined, and thereby jeopardizing the operation of Canada's whole immigration system. It was clear that the process needed overhaul to provide for a speedier and more efficient determination system.

The 1985 report "Refugee Determination in Canada", prepared by Rabbi W. Gunther Plaut for the then Minister of Employment and Immigration, Flora MacDonald, aimed to show how such an overhaul could be achieved. This exhaustive investigation focused on four main areas of inquiry: the basic principles that should inform refugee policy, the process that should be implemented to observe these overall principles, the structure necessary to articulate that process and the support that should be provided to claimants while in Canada.

The first section of Plaut's report argued that seven basic principles should be recognized when designing refugee policy or considering the nature of any necessary reforms:

> (1) That Canada considers itself morally and legally bound not to return Convention refugees to the land of their persecution.
> (2) Refugee determination is not an immigration matter (immigration procedures and refugee determination coverage only in the *person* of the claimant).
> (3) Refugee determinations must be made by an independent decision-making body.
> (4) The refugee determination system must meet Canadian standards of natural justice and comply with legal standards of natural fairness.
> (5) All persons involved with the determination process must be aware of the special situation of the refugee and the good faith of the claimant must be assumed.
> (6) The process must be expeditions -- greater justice is not necessarily achieved by additional appeals or reviews.
> (7) The focus of the determination process should be on the potential refugee -- not on the possible misuse of the system. Indeed, in an expeditions system, exploitatious of that system would be unattractive (Plaut 1985, 13-24).

In terms of the process necessary to recognize these principles, the major recommendations made by Rabbi Plaut were:

(1) That all persons, regardless of their immigration status, have a right to make a claim to Convention refugee status either at a port of entry or while physically present in Canada;

(2) that the exclusion and cessation clauses of the 1951 Convention be incorporated into the statutory definition of a refugee;

(3) that the concept of inadmissible claims should be introduced (covering claims that are legally inadmissible, have passed the time limits or are repeats) and that these should not be pursued through the complete refugee determination process. As safeguards, both a refugee board member and a representative of the UNHCR would have to agree that the claim was inadmissible and the claimant would be entitled to appeal, with leave, to the ^Federal Court of Appeal;

(4) that the refugee determination hearing be a non-adversarial, cooperative inquiry;

(5) That the hearing before the refugee board should be public, subject to the right of the claimant to require that it be held *in camera*;

(6) That the UNHCR should have the right to be present, via its representatives, at all hearings or reviews, at all levels, in order to present evidence, make submissions or voice opinions during decision-making deliberations;

(7) Claims should be determined by the refugee board in accordance with a procedure that provides for two oral hearings and an appeal, with leave to the federal Court of Appeal. Such an approach ('Model C' in the report) provides the greatest fairness to the claimant and is estimated to take a total of five and a half months to complete;

(8) That the refugee board should have the power to recommend cases for humanitarian and compassionate consideration to the Minister; and that the claimant be advised of such a referral and permitted to make representations to the Minister (Plaut 1985, 60-64, 85-86, 91-92, 100-104, 107-119, 120-129).

With regard to structure, Rabbi Plaut recommended that a new 'Refugee Board' be established to determine claims to Convention refugee status; that such a board be part of a new 'Immigration and Refugee Board' that would also include the Immigration Appeal Board; that such a Refugee Board should consist of a Hearings Division, an Education Division and a Documentation Division; and, that all members of the board should be extensively trained by the Education Division (Plaut 1985, 131-143).

Finally, the report recommended that instead of being obliged to wait for an inquiry to be convened before they qualify for employment authorization (a requirement that has resulted in a waiting period of up to eight months), refugee claimants should be allowed to apply for generic employment authorizations once they had informed a refugee officer that they were making a claim to Convention refugee status. The report further recommended that claimants who were in financial

need and unable to find work should have the right to receive social assistance and that this should be achieved by an amendment to the Canada Assistance Plan prohibiting discrimination on the basis of immigration status, or by means of federal/provincial agreements. Such changes would ensure that Canada met its implied obligation under the 1951 Convention to ensure that claimants were provided with the necessities of life and that section 8.11 (2) of Canada's Immigration Manual (which states that "we must make it possible for claimants to await the outcome of their claims without undue physical or economic hardship") was being implemented (Plaut 1985, 144-48).

Ironically, the next major development was to resolve one of the main difficulties discussed above while exacerbating the others. The screening procedure outlined in section 71 of the Immigration Act, 1976 ordered the IAB to refuse any cases that did not first establish a probability of a positive determination. However, the 1985 Supreme Court decision in *Harbhajan Singh et al.* v. *The Minister of Employment and Immigration* radically altered the situation with its finding that the Board must hear every case, notwithstanding section 71. The appellants argued that natural justice, the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms required that they be permitted to present their case before IAB reached a decision (Plaut 1985, 51). The court's ruling in favour of the appellants meant that every applicant was guaranteed at least one oral hearing (Grey 1988). However, while correcting one perceived weakness in the system, the decision meant that the determination process for every claimant was lengthened still further.

The *Singh* case was important in another respect. The Immigration Act, 1976 restricted the right to claim refugee status to persons undergoing an immigration inquiry to determine whether they should be removed from Canada. In other words, individuals legally in Canada could not claim refugee status; they would need to commit some offence to trigger such an immigration inquiry before they could claim refugee status, and such a strategy ran the risk of an unsuccessful claim (Ratushny 1984, 12; Plaut 1985, 36). However, the *Singh* decision, in the words of Julius Grey, "provided an opportunity for getting out of the strait-jacket by creating a constitutional right to apply for refugee status". Indeed, in his view, the "conclusion on Canadian procedure, following *Singh* and before the amendments which are presently in the process of being passed is that the procedure is by and large satisfactory ..." (Grey 1988).[14]

6.4 Prelude to Change: 1986-87

On 21 May 1986 the Minister of State for Immigration announced proposed changes to the refugee determination system. These changes were designed, first, to "help those who genuinely need protection and discourage those who seek to use the system for purely economic reasons", and second, to respond to the 1985 recommendations of Rabbi Plaut concerning weaknesses in the existing system (EIC, Policy and Program Affairs Branch, Refugee Affairs Division 1986, 43).

In addition to proposing these major changes, the Minister announced changes that would take place immediately: introduction of the so-called 'administrative review' and 'fast track' approaches to refugee status determination. Both were designed to eliminate the backlog of refugee claimants that had developed and thus enable a new refugee determination system to be introduced smoothly once the proposed legislation had been passed by Parliament.

To carry out the administrative review, all refugee claimants' cases that were in the backlog of claims waiting for determination as of midnight on 21 May 1986, were to qualify for a case-by-case review, to begin on 15 July 1986. Claimants who satisfied the review's criteria would be granted refugee status in Canada, while those who did not would have, as before, the right to a hearing of their refugee claim. The Minister estimated that between two-thirds and three-quarters of

cases in the backlog as of 21 May 1986, would comply with the review criteria (EIC, Policy and Program Development Branch, Refugee Affairs Division 1986, 50-51).

To establish their eligibility for landing, claimants in the backlog had to fulfil several criteria. Most important, they had to demonstrate their successful establishment in Canada. Immigration officers were to determine this on the basis of the following criteria:

(1) the claimant's stability in employment in Canada;
(2) the length of time the claimant had been employed in relation to the time he had spent in Canada;
(3) the frequency of and reasons for changes in employment;
(4) the present income and future income prospects of the claimant's present employment; and
(5) the claimant's family obligations (*Refugee Claims Backlog Regulations* 1986, section 5(1)).

Where it was not possible to determine whether the person had become successfully established, the immigration officer was to consider his or her potential to become successfully established on the basis of the following factors:

(1) work history and experience in his country of former residence in an occupation that he is prepared to follow in Canada;
(2) occupational skills that are likely to facilitate his absorption into the Canadian labour market;
(3) educational level and the impact of that level on his employment prospects;
(4) ability to communicate in one of Canada's official languages;
(5) the presence in Canada of a relative who is willing and able to provide financial and other assistance while the claimant is establishing himself in Canada;
(6) personal suitability to become successfully established in Canada, based on adaptability, motivation, initiative, resourcefulness and similar qualities; and
(7) the claimant's family obligations (*Refugee Claims Backlog Regulations* 1986, section 5(2)).

Other criteria to be considered included Canada's obligation to provide protection, humanitarian concerns (taking into account those who would not be removed from Canada in any event), the ability to meet standard medical and security admission requirements, and the presence of the claimant in Canada (for no one who had left Canada would be eligible) (EIC, Policy and Program Development Branch, Refugee Affairs Division 1986, 50-51).

Government statistics show that more than 27,000 cases came under the Administrative Review Program. Between September 1986 and 25 October 1987, 98 per cent of the cases had been processed, involving 27,360 claimants. Of this number 22,811 passed the review, 4,240 failed and were referred to the refugee determination process, while 309 persons 'abstained', that is, did not allow their cases to proceed. Statistics show that 21,150 of the successful claimants passed the Review for economic reasons, 1,350 passed on humanitarian grounds and 356 on Family Class criteria. Their landing in Canada, as discussed earlier, occurred mainly in 1987, but a considerable

number were landed in 1986, and the remainder will appear in the data for 1988. Indeed, by the end of March 1988, an additional 410 individuals had landed under the review (EIC Landed Immigrant Data System, unpublished tabulation 29 April 1988). Of those successful, 32.6 per cent were destined for Quebec, 63 per cent for Ontario and only 3.6 per cent for the remaining provinces (Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division 1987b, 46). It is worth noting that individuals landed under this program had already been present in Canada for some time.

Claimants landed under the Administrative Review are recorded as part of the Other Independents category of immigration landings, rather than as part of the Refugee Classes (C. Taylor, EIC, personal communication, April 1988). This is because the criteria used by the Administrative Review were not those applied to refugee admissions so that the Administrative Review did not land individuals as refugees.[15] This has implications the recognition of individual refugee status and also affects the changes in immigrant classes entering Canada discussed above. Thus, some 29 per cent (or 6,583) of the Other Independents landed in 1986 and 33 per cent (or 16,982) of those landed in 1987 were landed under the terms of the Administrative Review (David Hall, Refugee Determination Task Force, personal communication April 1988; EIC Landed Immigrant Data System, unpublished tabulation, 29 April 1988). If these numbers had been included with the Refugee Classes, then refugees and those landed under the review would represent 25.8 per cent (26,578) of total immigration in 1986 and 25.3 per cent (38,518) in 1987 -- rather than the declining figures of 19.3 per cent and 14.2 per cent that the refugee figures now show. (Moreover, the considerable increase in the Other Independent category between 1986 and 1987 must be attributed partly to the addition of the Administrative Review numbers and not to the effect of other policies.)

Essentially, the administrative review introduced a method of quickly determining the status of claimants in the refugee claims backlog by granting amnesty -- although the government was careful not to use that term to describe the procedure -- to those who could demonstrate successful establishment in Canada and to admit them as Independent and Family Class immigrants, not as members of the Refugee Classes.

Refugee claimants who arrived in Canada after the 21 May 1986 deadline were to receive refugee determination under an expedited process until such time as the proposed legislation was enacted. This process embodied two elements: the granting of Minister's Permits to claimants from certain countries and faster RSAC processing for those not granted such permits (the fast track process).

With respect to the first element, the government announced that since Canadian policy had been not to remove individuals to a number of countries with repressive regimes or where civil war, unrest or social strife prevails, the government would automatically issue Minister's Permits (with a right to work) for up to one year to applicants from such countries, pending the outcome of their refugee claims (EIC 1987a, Backgrounder A, 1). The countries affected by this provision were listed in Appendix B-1 of the *Immigration Manual*:

Afghanistan	Iran
Albania	Laos
Bulgaria	Lebanon
Cuba	North Korea
Czechoslovakia	People's Republic of China
Democratic Kampuchea (Cambodia)	Romania

El Salvador	Sri Lanka
German Democratic Republic	USSR
Guatemala	Vietnam

As the government argued, this "would allow the use of a 'fast-track' process for the non B-1 country applicants" (EIC 1987a, Backgrounder A, 1).

It should be noted that Minister's Permits were issued for only a year; thereafter those receiving them could either reapply for a Minister's Permit or enter a claim in the refugee determination system.

Under the second element, the fast-track process, the government stated that additional resources would be devoted to increasing the numbers dealt with at all stages of the determination system. The RSAC would hold a greater number of oral hearings and provide faster processing for "genuine refugees". The Immigration Appeal Board would use a portion of the increased resources exclusively for refugee redetermination. In this way, refugee claims were to be dealt with swiftly. As the government argued,

> This combination of increased resources and altered priorities will ensure that new cases are dealt with expeditiously through the transition period until the government's proposals for a new refugee determination system are enacted in legislation (EIC, Policy and Program Development Branch, Refugee Affairs Division 1986, 51).

One final measure introduced on 21 May 1986 was to alter the procedure for claimants arriving from the United States. Prior to this date, people arriving from the United States to claim refugee status remained temporarily in the United States until a Canadian immigration inquiry could be scheduled. On 21 May 1986, however, a blanket admission policy was introduced, allowing individuals to wait inside Canada for determination under the fast track process or receive automatic Minister's Permits under the B-1 approach, depending upon their country of origin (EIC 1987a, Backgrounder B, 1).

These measures soon proved inadequate, largely because the policy of blanket acceptance for individuals from certain countries of origin (the B-1 list) acted to attract more claimants to Canada rather than to reduce the overall backlog of claims. The government stated that in December 1986, more than 3,000 people entered Canada to make refugee claims. In the first six weeks of 1987, more than 6,000 claims were made (EIC 1987a, 3). This increasing trend, coupled with U.S. action taken in November 1986, prompted the government to announce a further series of administrative changes on 20 February 1987.

In introducing these measures, the Minister of Employment and Immigration again stated the government's intention to introduce a wholesale revision of refugee legislation in the future; meanwhile, the announced changes were to curb abuse and prepare the way for the new legislation.

> These changes are made in anticipation of the tabling of legislation for the new refugee determination system. In the interim, these changes are made to bring uniformity to our border and refugee policies. The previous patchwork of differing treatment and practices created opportunities for abuse, and opportunities for the

> unscrupulous to exploit migrants around the world (EIC 1987a, Speaking Points, 7).

The administrative changes, which took effect immediately, consisted of four elements. First, the "blanket policy on admissions/non-deportation which applies to certain countries" was cancelled (EIC 1987a, 1). In other words, the automatic issuing of Minister's Permits to individuals from countries on the B-1 list was abandoned. Henceforth, all refugee claimants (including those from B-1 list countries) would be processed in the same way: all applicants would "receive an inquiry and permission to work would be given during the inquiry process. Those found to be genuine refugees can then be processed for landing in Canada" (EIC 1987a, Backgrounder A, 2).

The government argued that these changes were necessary because the actual effect of the B-1 list approach had been to attract more refugee claimants, not to reduce the backlog; because this "extraordinary increase in claims" had not resulted in any advantage in processing refugee claims through two streams; and because increased restrictions in Europe and the United States had resulted in increased worldwide migration trends. Thus both 'push' and 'pull' factors had interfered with the intended effects of the 1986 changes. The government also added that part of the rationale for returning to case-by-case consideration for all claims was to ensure fairness. They argued that the blanket policy was not capable of discriminating between individuals from B-1 list countries who were oppressors (rather than oppressed), who were from unaffected regions of the countries concerned, or who were individuals not defined as refugees because they were economic migrants, criminals or security risks. The new approach recognized "that we need to view each *individual's* need within the specific context of the country to which they might be returned" (EIC 1987a, Backgrounder A, 2-3; emphasis in original).

Second, all refugee claimants coming from the United States would remain temporarily in the United States until a Canadian immigration hearing could take place. The decision to abandon the B-1 list carried with it the need to revise the previous policy concerning the United States. The government also argued that this move was necessary because amended U.S. immigration legislation announced in November 1986 had made the existing procedure "untenable". These amendments had provided amnesty only to those "illegal migrants" who had entered the United States before 1982. Fines for employers who hired illegals were also introduced. "The consequence of these U.S. changes", the Canadian government argued, "has been a rapidly increasing number of refugee claims at our border with the United States. This situation has contributed to the need for this procedural change" (EIC 1987a, Backgrounder B). All claimants therefore had to remain in the United States until an adjudicator became available to conduct an immigration hearing. Once a hearing was scheduled, the claimant would be allowed into Canada while a decision was being made. The government argued that "under these arrangements, people will not risk being returned to their homelands" and pointed out that claimants could also apply at a Canadian consulate in the United States for consideration under the overseas refugee selection system (EIC 1987a, Backgrounder B, 1-2).

The effects of these changes can be seen in the changing pattern of RSAC data over the period 1986-1988. Table 11 shows the pattern of incoming claims under the fast track process. (When considering these data it is important to recall that the B-1 list was in operation between 21 May 1986 and 20 February 1987.) At first sight, the picture appears similar to 1981-1986 (Table 6) in that the top ten source countries still dominate.[16] However, this group now represents only 60 per cent of all incoming claims, and the leading source country represents only 10 to 16 per cent of the total. The most noticeable difference is the constitution of the top ten. Thus countries such as Somalia, Honduras and Pakistan appear for the first time in this group, while

Ghana, Portugal, Turkey, Chile and Iran are included among the top three. Given the alterations in procedures over this period, these changes are not unexpected. Indeed, with the abandonment of the B-1 list in February 1988, incoming claims under the fast track process began to resume their more 'traditional' pattern. What was perhaps unexpected, given the changes during this period, was the great increase in the number of incoming claims between March 1987 and February 1988.

Of course, the pattern of incoming claims does not translate directly into a pattern of acceptances because the RSAC's acceptance rates vary considerably. Decisions are made on an individual basis, so that generalizations by country, region or time period are difficult. However, in terms of a general average over the whole period since 1978, RSAC estimates that its acceptance rate has been approximately 30 per cent (Joseph Stern, RSAC, personal communication April 1988). This means that approximately 70 per cent of all incoming claims have been rejected.

Over the period 1975 to 1988, the acceptance rate varied between 14.5 per cent and 36.7 per cent, with the exception of the period 1986-87 to 1987-88. The acceptance rate for the non-fast track stream rose in 1986-87 to 52 per cent because of concerns RSAC had about the Administrative Review, while the acceptance rate for the fast track stream fell to only 10 per cent in 1986-87 because of the removal from RSAC consideration of claimants from countries on the B-1 list. The return of such countries to RSAC's jurisdiction meant that the acceptance rate for the 1987-88 fast track stream, at least on the basis of present data, rose to 21.7 per cent and is now much more in keeping with the overall rate for the whole period (EIC, Policy and Program Development Branch, Refugee Affairs Division 1984, 32; 1985, 40; 1986, 66; 1987b, 48; RSAC, unpublished data).

Changes between 1986 and 1988 have meant that a somewhat different group of countries has occupied the top ten positions in terms of acceptances (see Table 7). Somalia and Ethiopia for example, became the leading contributors of refugees whose claims were accepted between 1986-87, and 1987-88, and South Africa made its first appearance in this group in 1987-88. However, it is important to notice that as the RSAC resumed jurisdiction over all incoming claims, so the more traditional sources of acceptances resumed their leading positions. Table 7 also shows that over the entire 1980-1988 period, there were only 7,032 acceptances or an average of 879 per year. It is important to note that total annual acceptances have not declined under the procedures introduced between 1986 and 1987, nor were annual totals rising before their introduction. Thus in 1986-87 the total was 1,328, and for the 11 months between April 1987 and February 1988 it was 1,204, figures that compare with annual totals of approximately 1,000 to 1,250 between 1983 and 1986, the three years immediately prior to the changes.

The government introduced two other measures on 20 February 1987. Individuals travelling via Canada to another country would now require transit visas to pass through Canada if they came from countries whose citizens required visitor visas to visit Canada. This change altered the practice of many years; the citizens of most countries requiring visitor visas have not needed transit visas when the purpose of their visit was simply to make a connection with a flight to another country. However, starting in 1983, this transit privilege was used increasingly by individuals to reach Canada and claim refugee status; as a result, transit visa requirements had been imposed on a total of 18 countries since 1983. Interestingly, Raphael Girard (Director, Refugee Determination Task Force, EIC) noted in 1986 that the majority of these restrictions "were imposed in response to growing volumes of refugee claims" (quoted in Hathaway 1988a, footnote 122). Hathaway identifies these countries as El Salvador, Chile, Haiti, India, Sri Lanka, Bangladesh, Jamaica, Guyana, Peru, Guatemala and the Dominican Republic (Hathaway 1988a, footnote 122).

By mid-1986, these restrictions applied to citizens of Afghanistan, Bangladesh, the Dominican Republic, Egypt, El Salvador, Guatemala, Guyana, India, Iran, Iraq, Jamaica, Lebanon, Pakistan, Sri Lanka and Syria who were in transit in Canada for less than 48 hours (Immigration Regulations, Section 13 and Schedule II, 7; Marrocco and Goslett 1986, 289, 341).

This situation was altered on 20 February 1987. Arguing that "unscrupulous immigration and travel consultants in Canada and abroad have advised people to book flights to another country with transit stops in Canada" (EIC 1987a, Backgrounder C, 1), the government extended the transit visa requirement to a total of 98 countries. This meant that the transit visa requirement now included all those countries whose citizens previously had required visitor visas to enter Canada for visits of longer than 48 hours. These countries were originally defined as those not exempted by Schedule II of the Immigration Regulations, but they were now named explicitly. Henceforth all these countries' citizens would require both visitor and transit visas, depending on the length of their stay in Canada, to visit this country:

> Citizens of countries requiring a visitor visa to enter Canada now also require a transit visa when the purpose of their visit is to travel through Canada enroute to a third country (EIC 1987a, Backgrounder C, 1).

Hathaway has called this a "comprehensive visa requirement" and argues on the basis of a telex sent by EIC to all Canada Immigration Centres, that this "applies both to persons who wish to come to Canada, and to those who intend only to transit in Canada en route to a third country" (Hathaway 1988a, footnote 138). In passing, it should be noted that the relevant clause of Schedule II was redrafted to exempt from these visa requirements only persons "who are in transit through Canada on a flight which stops in Canada solely for the purpose of refuelling" (EIC 1986a, IL2, Schedule II, 7; July 1987 update).

The government believed that this measure would limit one major source of fraudulent claims, for the "requirement for transit visas will significantly reduce the number of non bona fide visitors who abuse the transit privilege to claim refugee status". However, they were keen to point out that this measure" would not compromise the safety of genuine refugees in need of our help, since they can make refugee claims at any Canadian embassy or consulate abroad" (EIC 1987a, Backgrounder C, 1).

Since announcing these visa changes on 20 February 1987, the government has removed Honduras, Fiji, Bolivia, Brazil and Panama from the list of countries exempted from visa restrictions and has required their citizens to obtain visitor visas to enter Canada (EIC 1987c; 1987e; 1988b). These moves have been prompted by rising numbers of refugee claimants arriving from these countries. Indeed, in introducing the Brazilian restrictions, the Minister of State (Immigration), at the time linked them explicitly to refugee policy:

> We will provide efficient visa services in Brazil, but we must at the same time protect our refugee determination system from abuse (EIC 1987e, 2).

Thus, when announcing on 6 July 1987 that citizens of Brazil would require a visa to visit Canada, the government stated that this move had been taken "reluctantly and only after investigating, in cooperation with authorities in Brazil, ways of curbing the flow of illegal migrants". In supporting this position, the government stated that almost 1,500 people from Brazil

had arrived in Canada since January 1987 and that the number of "illegal migrants" had risen sharply in the two months prior to the announcement (EIC 1987e, 1).

A similar announcement on 3 December 1987 introduced visitor visas for citizens of Fiji. In the three months prior to the announcement, the total number of visitors arriving from Fiji had risen to more than 2,500. The government's concern was that "many people coming to Canada intend to remain in this country rather than merely visit" and that the number of Fijians "who may seek to stay permanently in Canada is increasing dramatically", and the government argued that "the visitor visa will stop this practice" (EIC 1987c, 1). In the case of Panama, visitor visas were introduced on 7 September 1988 "in the face of escalating numbers of Panamanians arriving at our borders" (EIC 1988b).

The government again emphasized that Brazilians and Fijians could apply for visitor visas at any Canadian mission abroad and that bona fide visitor traffic could continue unimpeded. Indeed, to expedite matters, Canada would now process visa applications in Rio de Janeiro, Sao Paulo and Brasilia. In the case of Fiji, visa officers were to be stationed there temporarily "to deal with the anticipated flow of requests to visit Canada" (EIC 1987c, 2; 1987e, 2). Panamanians could apply at any Canadian diplomatic or consular mission abroad; the Canadian Embassy in Costa Rica retained overall responsibility for Canada's immigration program in Panama (EIC 1988b).

Finally, the Special Measures Landing Programs for Iran, El Salvador, Guatemala, Lebanon and Sri Lanka were modified to focus on overseas processing "to assist relatives of Canadians affected by events in these countries" and not on processing within Canada (EIC 1987a, 3). In a telex from the Director General of Public Affairs (EIC) to all Canadian Immigration Centres on 20 February 1987, the government cited concern over the potential for abuse of these programs by non-genuine refugee claimants as the reason for the change. It also articulated more clearly the nature of the change in these programs, which were to be "modified to focus (exclusively) on overseas processing ... of the relatives of Canadians affected by events in these countries" (quoted in Hathaway 1988a, footnote 120).

Prior to this decision on 20 February 1987, these programs had been directed largely to the needs of certain 'neo-refugees' physically present in Canada who were unwilling to return to their country of origin because of war or political instability. Such persons were granted a stay of deportation and an employment authorization and were generally eligible for landing as permanent residents under relaxed admissions criteria. The announced changes re-oriented the programs so that they now dealt with Canadian sponsorship of family members from countries experiencing severe strife for admission to Canada (Hathaway 1988a).

To complete the changes, the government also stated that increased assistance would be given to international airlines to aid them in detecting false travel documents among their Canada-bound passengers (EIC 1987a, 1-3).

These changes remedied some of the problems arising from the previous set of alterations and set the stage for the major revisions in refugee legislation that were to come. It should not be forgotten, however, that most of the changes introduced on 20 February 1987 (especially those concerning visa controls) were not temporary measures; they remain in place and unaffected by the Acts introduced as Bills C-55 and C-84.

6.5 The Debate over Bills C-55 and C-84

It is useful to conclude this section on the evolution of Canada's refugee policy by considering the discussion surrounding the passage of Bills C-55 and C-84 into law. Both were hotly debated and saw a number of important changes before receiving royal assent. The debate on the bills in the Senate was particularly important, not only because it highlighted the areas where amendments were considered essential, but also because it focused attention on areas that may well prove problematic in the future. For both reasons an analysis of the Senate debates on Bills C-55 and C-84 is important to an understanding of the evolution of Canadian policy.

The Senate responded to Bill C-55 on 11 May 1988 by proposing 12 amendments. The Standing Senate Committee on Legal and Constitutional Affairs, which examined the bill, argued that

> while a number of members of our Committee remain critical of the general approach of the Bill, we have concluded that the overall structure chosen by the government should be left intact, but that amendments are necessary to provide greater protection for claimants (Senate Report 1988, s3v6).

The Committee's most serious concern about safety involved the 'safe country' provision of Bill C-55. It was felt that the bill provided no formal mechanism to examine the fate of people to be returned to the safe third country. Individuals might easily be sent elsewhere by that country, perhaps leading to *refoulement* and jeopardizing their lives. Because of this, the Committee felt that the provision violated the 1951 Convention and the Canadian Charter of Rights and Freedoms guarantees to security of life and liberty. Indeed, the "great speed and impersonal treatment" with which individuals would be dealt, "might not always be compatible with the rights guaranteed in the *Charter*". The Senate Committee therefore proposed an amendment that would provide for return to a safe third country only if the Refugee Division member and the adjudicator at the inquiry were convinced that the safe country would be willing to receive the claimant or to determine the individual's claim on its merits. This would minimize the danger that asylum-seekers would be put "into orbit" or sent to another country (Senate Report 1988, 3367-68).

The Committee had two other concerns about the safe country provisions. The bill stated that a claimant who was in a safe country solely for the purpose of joining a connecting flight to Canada would not be considered as coming to Canada from that country and could not be returned there. The Senate Committee felt that this was too narrow a transit rule. A Central American who had travelled overland through the United States would not, presumably, be able to avoid being returned there, even though she or he had merely been transiting the country, while individuals who had missed connecting flights before reaching Canada could be returned to the safe country of transit in question. The transit rule thus raised the possibility that individuals could be returned without concern for their safety. The Committee's amendment sought to broaden the rule to cover all modes of transport and to recognize that whether a person had been in transit through a safe country "depends on the circumstances of the individual".

The other major concern was that C-55 provided for the safe country list to be drawn up by Cabinet. Witnesses before the Committee pointed out that this might "bring refugee issues into the political arena" because the absence of countries from the list would involve a public judgement on those countries. The Committee therefore recommended that the list be compiled by the Chairman of the proposed Immigration and Refugee Board in consultation with the Refugee Division. The advice of EIC, External Affairs, the UNHCR and other parties such as church and humanitarian

groups and legal experts should also be used. In a further recommendation the Senate Committee urged that a requirement present in the original bill -- that the list have regard to countries' human rights records -- should be reinserted, because relying completely on whether countries were parties to the Convention was not a sufficient guarantee of their behaviour (Senate Report 1988, 3368-70).

Beyond these concerns about safety, the Committee suggested that various provisions appeared to question certain principles. Thus, the setting of inquiry dates virtually upon arrival in Canada robbed claimants of time to choose counsel or for counsel to prepare a case. The Committee thought fundamental justice required that reasonable time be allowed for this as it is in all other types of cases. Claimants who receive negative decisions at the screening stage should also be given a reasonable period of time to instruct counsel concerning a judicial review; the Committee recommended that the stay of execution of removal be increased from 24 to 72 hours to allow for this. Witnesses testifying before the Committee also argued that the single chance to make a claim was too stringent a requirement, because many applicants would initially fear Canadian officials. Moreover, the UNHCR urged that failure to fulfil formal requirements (such as submitting a request by a certain time) should not prevent claims being considered. Consequently, the Committee suggested that claimants who could establish that a failure to claim resulted from misunderstanding or fear should have their claims heard (Senate Report 1988, 3370-71).

Other recommendations focused on the operation of the system proposed in the bill. Bill C-55 allowed for an appeal from decisions of the Refugee Division to the Federal Court of Appeal, but the grounds for appeal were unduly narrow. Because the consequences of an appeal would directly affect an individual's life, the Committee recommended that the Federal Court have the power to look closely at the particular facts of each case. The Committee urged that decisions to exclude claimants from review for security reasons be made by the Minister, not by officials. The Committee also expressed concern that the rigidity of the proposed system might prevent the identification of those who, while not refugees under the narrow Convention definition, should be allowed to stay in Canada on humanitarian or compassionate grounds. They recommended that the Refugee Division panel hearing the claim identify these cases for the Minister (Senate Report 1988, 3372-73).

In summary, the Senate Committee agreed that the refugee determination system needed improvement but did not endorse the process proposed in Bill C-55. Its amendments showed great concern that reforms were being made at the expense of asylum-seekers' rights and safety.

Bill C-84 also attracted an array of criticisms, which can be grouped into three main categories: the apparent illegality of many of the bill's provisions, the capacity of some provisions to endanger refugees' lives rather than protect them, and the potential for some provisions to produce unforeseen side effects.

First, several issues were raised about the apparent illegality of parts of the bill under international or domestic law. The bill proposed to allow the Minister to direct a ship within 24 nautical miles of Canada's shore to leave or not to enter the 12-mile zone. The Senate Committee felt that turning ships around without allowing due process to any refugee claimants on board violated section 7 of the Charter of Rights and Freedoms by depriving them of a hearing. They concluded that "the matter is at present unresolved and the Committee is not persuaded that Charter rights do not apply whenever actions are taken pursuant to Canadian law". They noted, in addition, that the *Singh* decision held that the protection of the Charter extended to everyone physically present in Canada and that, as a result, the right of refugee claimants to an oral hearing was likely to apply in the cases of claimants in Canadian waters (Senate Report 1987, 1745-46).

Concluding that ships should not be turned around at sea but should be brought into port, the Senate Committee expressed this view in an amendment to the bill. They argued that the best deterrence for organizers of irregular boat arrivals was swift and sure punishment, and this could be ensured only if ships were brought into Canadian ports. Moreover, they stated

> The only appropriate treatment for passengers who claim to be refugees is speedy and just processing according to the laws which apply to all refugee claimants, whether they arrive by air, land or sea (Senate Report 1987, 1746).

Bill C-84 authorized the detention of people who were unable to establish their identity, or were thought to pose a danger to the public, for up to 28 days with no review of the reasons. Witnesses appearing before the Senate Committee criticized these provisions because of the length of detention and because of the process. The length of detention without independent review was felt to be unprecedented in Canadian law, while the process vested decision-making power in officials for the entire 28-day period, during which time no one exercising power in a judicial manner could review the circumstances of the case, unless officials permitted. Legal experts appearing before the Committee argued that these provisions appeared to violate sections 7, 9 and 10 of the Charter, which guarantee the right not to be deprived of liberty except in accordance with the principles of natural justice, the right not to be arbitrarily detained, and the right to counsel and the right to be informed of that right (Senate Report 1987, 1751-52; Young 1987b, 8-10).

The Senate proposed a series of changes to safeguard the rights of individuals detained. An adjudicator would review the reasons for detention within 48 hours as was current practice. Thereafter reviews must be held weekly and the detained person informed of her or his right to counsel (Senate Report 1987, 1753).

Bill C-84 precluded individuals who had been certified to be a danger to the public from making a refugee claim. The previous legislation had allowed such individuals to make a claim; only if such a claim was successful would a decision be made concerning deportation. This ensured that the decision to deport a Convention refugee -- a step permitted under Article 32(3) of the Convention on the grounds of security -- was carefully considered (see Annex 1). The Senate Committee was concerned that forced removal to a country where persecution was feared would be a violation of section 12 of the Canadian Charter, which states that everyone has the right not to be subject to any cruel and unusual treatment or punishment. They also heard evidence from a constitutional law expert that excluding such individuals from the refugee process violates section 7 of the Charter, and from Amnesty International that the removal of such persons to countries where they might be tortured violated Article 3 of the United Nations Convention Against Torture, to which Canada is a signatory. As a result, the Committee proposed that people should not be precluded from the refugee determination system for security reasons (Senate Report 1987, 1742-44). Only people convicted of serious crimes and war criminals were to be excluded under the Senate amendment, a provision already confirmed by a 1987 amendment to the Immigration Act to exclude such individuals (An Act to amend the Criminal Code, 1987, clauses 3-5).

The bill's provisions regarding security certificates were also criticized. Since 1984, the Security Intelligence Review Committee (SIRC) had investigated joint reports from the Minister of Employment and Immigration and the Solicitor General that a visitor (or a permanent resident) was a security threat to Canada. SIRC would make a recommendation to the Governor in Council, which would then direct the Minister to issue a security certificate. Bill C-84 retained the SIRC procedure only for permanent residents. For refugee claimants it instituted a process whereby the

Solicitor General and the Minister jointly filed the certificate, which would then be reviewed by the Chief Justice of the Federal Court or a designated judge. The bill provided that during such a hearing the judge must exclude the individual concerned when the government presented its case if so requested by the Minister or the Solicitor General. Detention was mandatory for all those who were the subject of a certificate, pending the outcome of the hearing, and the judge must confine his or her ruling to whether the issuance of the certificate was reasonable on the basis of the information available to the government at the time of its issuance (Senate Report 1987, 1740-42).

The Senate Committee felt strongly that to treat refugee claimants and permanent residents differently, by providing fewer procedural protections to one group than to the other, violated section 7 of the Charter. Certainly, it was argued, preventing individuals hearing the full case against them violated the same section, and mandatory detention probably violated section 9. As a result, the Committee sought to amend the legislation to ensure that the right to exclude people from a hearing rested with the presiding judge, not the government; that the judge would perform a detention review at an early point in the hearing; and that the judge would be concerned with the reasonableness of the certificate itself, not just the reasonableness of the original decision. In this way, all information -- including that of witnesses and the testimony of the individual concerned -- would be considered, not just the information available to the government at the time the certificate was issued (Senate Report 1987, 1741-42).

Finally, the criticisms relating to possible illegalities centred on the "extraordinary powers" given to immigration officers by the bill (Dirks 1987, 22). Under the previous law, immigration officers had powers to arrest, detain or remove people from Canada, but not to search for evidence or seize vehicles or evidence. To enforce Bill C-84, the government proposed to extend search, seizure and forfeiture powers to immigration officers in cases involving aiding and abetting groups of 10 or more undocumented persons and the disembarkation of people at sea (Senate Report 1987, 1748).

Many witnesses before the Senate Committee felt that such additional powers were unnecessary, arguing that the provisions of the Customs Act and the Criminal Code were sufficient. However, the Committee felt that with amendment the proposed provisions could be made to comply with section 8 of the Charter, which stipulates that everyone has the right to be secure against unreasonable search and seizure. Instead of allowing a search warrant where a justice of the peace was satisfied that there were reasonable grounds that evidence or a vehicle *may* be found, the Committee argued that search warrants should be provided only where "there are reasonable grounds to believe that there *will* be found" evidence or vehicles (Senate Report 1987, 1749-50).

In their efforts to restrict access to the determination process, some provisions of the bill appeared to endanger the lives of asylum-seekers. The Senate Committee observed that individuals considered to be a security threat, and thus expelled without a determination as to whether they were Convention refugees, would have no case to put either to another country or to the UNHCR. Indeed, representatives from the UNHCR advised the Committee that they might assist Convention refugees in such cases, but only following determination of their status. These refugee claimants' chances of safe haven would be thus perceptibly reduced. The Committee was also concerned that much of the security intelligence underlying exclusion detentions might be unreliable or fabricated because it originated in the person's country of origin and might even be designed to discredit those considered dissidents. To derive decisions from such evidence was to allow individuals to be jeopardized by the countries they sought to flee (Senate Report 1987, 1743).

A third group of criticisms of Bill C-84 concerned provisions with apparent side effects that did not advance the purposes of the bill and, in some cases, complicated its operation. Thus, the emphasis on turning ships away, rather than apprehending and confiscating them, permitted such ships to make repeated attempts to land in Canada, perhaps in more risky waters, or to disembark their passengers at sea beyond the reach of Canadian authorities (Young 1987b, 3-4). Certainly, in this light, the high fines for organizers appeared to lose their deterrent value. The Senate Committee felt that

> To such an organizer, turning the ship around would result in a total lack of punishment. Better to ensure that those involved are caught, fined, imprisoned and suffer the loss of their ship if deterrence is the goal (Senate Report 1987, 1745).

Church groups and others with humanitarian aims who help refugee claimants appeared to be in danger of finding their activities made criminal offences by the bill, according to witnesses before the Senate Committee. Much of their work consists of advising people how to get to Canada and how to proceed to make a proper refugee claim once in this country. The breadth of the bill's wording concerning aiding and abetting appeared to cover such activities; as a result, humanitarian groups would have to stop this work or risk breaking the law. Government officials argued that new offences were not being created: church and humanitarian groups could already be prosecuted under the 1976 Act. In addition, the Minister responded to the fears of church groups in his testimony before the Committee by assuring them that the bill was not directed at their activities and that they would not be prosecuted. However, the Committee was sufficiently concerned by the breadth of the provision and its implementation that it proposed several amendments. The law, the Committee argued, should apply to those who encourage people to come to Canada and make refugee claims knowing that the individuals have spurious cases, and to those who knowingly aid or abet anyone coming into Canada in a clandestine manner (Senate Report 1987, 1746-47).

Such amendments would allow humanitarian groups to continue their work, while countering the activities of unscrupulous immigration consultants, both in Canada and abroad, thereby reducing abuses. Certainly, this was the approach envisaged in a 1981 EIC discussion paper. A pilot project should be established, said the paper,

> to develop expertise within such (ethnic) communities by providing actual instructions in immigration law, procedures and practices, which would, in turn, be made available to immigrants on a volunteer basis (Task Force 1981, 12).

Replacing the Security Intelligence Review Committee with the Federal Court as the overseer in cases where a person is believed to be a security threat would remove a body that has been critical of the standard and value of CSIS reports in such cases, as well as replace an expert body with a court process where considerable backlogs already exist (Young 1987b, 12-13). The Senate Committee added that "the need for such a change is somewhat unclear since we understand that SIRC has not been required to investigate a single refugee case as such since it began". Moreover, the Chairman of the RSAC pointed out in his testimony to the Committee, that some of the security grounds for exclusions are highly selective and could exclude people such as journalists, parliamentarians, social workers or academics, for they may also be working to "engage in or instigate the subversion by force of any government" (Senate Report 1987, 1740, 1744).

The Air Transport Association of Canada suggested that, in addition to their concern about the legality of certain provisions, they were also concerned about the practical difficulties of collecting and returning hundreds of passports to passengers; the consequences if passports were returned to the wrong individuals (both for the airlines and those that lost their passports in this way); and the security of passengers in the case of hijacking. As their representative informed the Senate Committee,

> if you had a hijacking situation and the airline staff was handing passports over to hijackers who sought out special races or special groups from various religions to start killing those individuals, where would the liability cover be for the carriers under those circumstances ...? (Senate Report 1987, 1754).

Finally, the Committee was concerned that the precedents created by the bill might prove to have the most undesirable side effects of all those discussed here. In the past, Canada has deplored the use of detention as a means of deterring refugees, yet it now intended to legitimate this practice (Senate Report 1987, 1752). Turning back a shipload of people claiming to be refugees without even hearing their claims could create a powerful example for the world community while damaging international efforts to help and protect refugees (Young 1987b, 3-4). As the Senate Committee noted,

> The Committee has been reminded of the positive example Canada set for the rest of the world in 1979 and 1980 when we urged the countries of Southeast Asia not to turn away boat loads of refugees. More sadly, we have also been reminded of the voyage of the St. Louis in 1939. Canada was not the only country, but was the last, to reject people whose subsequent deaths remain a potent memory in the Canadian consciousness (Senate Report 1987, 1746).

The government responded to the debate by replying, first, to the criticisms of the Senate Committee relating to Bill C-84. On 26 January 1988, the Minister of Employment and Immigration accepted nine recommendations that clarified the bill, but he rejected 11 of the Committee's amendments and refused to consider any fundamental change to the principles of the bill, despite the Senate's misgivings. Thus, the Minister accepted the proposal that individuals be present during hearings of the government's case concerning security certificates; that Federal Court judges assess the reasonableness of the certificate itself; that a weekly review of detention by an adjudicator take place; that officials inform persons detained of the right to counsel and permit them to obtain such assistance; that search warrants be issued only where there are reasonable grounds to believe evidence *will* be found; and, that prosecutions be launched under the aiding and abetting sections only with the personal written consent of the Attorney General of Canada (EIC 1988, Backgrounder, 1-6).

With respect to the major criticisms of the bill, the Minister responded that the removal of the ability to turn ships round would "leave a significant gap in Canada's ability to control its borders" and therefore could not be accepted. The Senate's proposal to eliminate the preclusion of people thought to be a security risk from the refugee determination system made "no sense whatsoever", said the Minister, since such people would be deported eventually. "They *should* and *will* be removed -- whether they are refugees or not", the Minister argued. The bill, he added, closed a loophole by which "people who are criminals or terrorists can use the refugee claims

system to defer their removal from Canada for many years" (EIC 1988, Backgrounder 2, Speaking Notes, 4, 9).

Interestingly, the Minister made no mention of the UNHCR's concern about *refoulement*, nor did he deal with the Senate Committee's comments on this issue. Instead, the Minister maintained that genuine refugees who must use boats would not be turned away; only those from safe countries who "are simply seeking to improve their economic circumstances" would be turned away. How this distinction was to be made without some form of determination procedure, the Minister did not elaborate. The concerns of the Senate Committee that the bill frequently violated the Charter were, however, noted by the Minister, if only to be dismissed:

> As I told the senators, during all the months of the government's consideration of solutions to abuse of the immigration program, Charter compliance was foremost in our minds. I rejected any suggestion that the Charter simply should not apply to persons who are not Canadian citizens or permanent residents of Canada. The Charter applies equally to all people regardless of their status in Canada. That is the law and Bill C-84 is consistent with the law. This view was affirmed by the expert counsel I have received from the department of justice (EIC 1988, Speaking Notes, 5).

On 3 June 1988, Barbara McDougall, the newly-appointed Minister of Employment and Immigration, responded to the Senate report on Bill C-55, accepting two of their amendments and accepting a further five with substantial revisions. The government was prepared to agree that the stay of execution of deportation orders be lengthened from 24 to 72 hours and that IAB officers have a right to just compensation as the Senate argued. The government was also prepared to revise the bill to allow claimants a reasonable time to select counsel, to allow decisions involving security issues to be made by the Minister, to include the observance of human rights with the evaluation of a safe country's record, and to ensure that safe countries were prepared to accept returned individuals or to give them the right to make a refugee claim. The Minister was not, however, prepared to give up Cabinet's right to draw up the list of safe countries to which individuals could be returned. The Minister felt that Parliament could not relinquish this authority. Instead, as a compromise, a body to advise the Minister was proposed:

> we are recommending the establishment of a special consultative committee. This consultative body will include non-governmental representatives with experience in refugee matters. It will advise and update the Minister concerning the establishment of the safe third country lists, and, on a regular basis, about any changes internationally that could affect safe return to a third country. We believe this is an important safeguard against possible error (*House of Commons* Debates 3 June 1988, 16095).

All other Senate amendments were rejected as either increasing workloads under the new legislation or, as in the case of the transit rule amendment, creating further loopholes for potential claimants (*House of Commons Debates* 1988, 16095-97; EIC 1988c).

In the meantime, the Senate had rejected Bill C-84 for a second time, even though the Minister, at that time still Benoît Bouchard, "angrily rejected any suggestion he would allow further changes" (*The Ottawa Citizen* 3 June 1988, A1-A2). In rejecting the bill a second time, the Senate

insisted that the government drop the proposal giving authorities the power to turn away ships at sea that were deemed to be carrying bogus refugees. Instead, ships should be brought into Canadian ports so that their captains could be prosecuted and their passengers given a proper hearing to determine their refugee status. Mr. Bouchard argued that he needed the power to turn back ships carrying illegal aliens.

In its first set of amendments, the Senate Committee asked that the provision allowing prosecutions of anyone helping refugee claimants without valid travel papers or passports be dropped to protect church groups and that individuals considered security risks still receive a hearing. Mr. Bouchard had rejected these demands, but in its second set of amendments, the Senate suggested a compromise: they would accept a provision giving the government power to prosecute those helping groups of 10 or more undocumented claimants and would agree to a provision making the Minister responsible for the decision to deny hearings to security risks. On 3 June, the new Minister, Barbara McDougall, indicated her willingness to accept this latter recommendation. Indeed, reports indicated that the Minister was ready to respond to the Senate amendments on Bill C-84 in the House of Commons at the same time as her response on Bill C-55 but found that under parliamentary rules this was not possible (*The Ottawa Citizen* 3 June 1988, A1-A2).

Negotiations continued between the Minister and the Senate to end the controversy over the two refugee bills. Thus, it was reported on 2 June 1988 that the Minister had "agreed to accept at least two more Senate amendments to the two pieces of legislation in return for an assurance senators will pass the amended bills before parliament rises for the summer" (*The Ottawa Citizen* 4 June 1988, A4). As a result, more than a month later, in amendments passed by the House of Commons on 12 July 1988, the government introduced a series of changes to Bill C-84 designed to meet the Senate's concerns.

The government proposed to limit the power to turn back ships to those carrying illegal migrants intercepted within Canada's "contiguous zone" (between 12 and 24 nautical miles off Canada's coast). The Minister would have exclusive responsibility to direct vessels suspected of carrying people trying to enter Canada in contravention of immigration law not to enter Canadian waters. This authority would be exercised bearing in mind both the state of the vessel and its passengers and the 1951 Convention. The decision to turn back vessels would also take into account whether a claimant would be allowed to return to the safe third country of embarkation or whether the person would have the right to claim refugee status in that country. The government tied its acceptance of the Senate's concerns about the power to turn away ships with Senate passage of Bill C-55 by adding a 'sunset clause' to Bill C-84 that would eliminate the authority to turn away ships six months after the proclamation of Bill C-55. The government also proposed that vessels intercepted within 12 nautical miles (that is, within Canadian waters) be directed to a Canadian port if they were suspected of bringing illegal migrants to Canada. Those on board would be treated as if they were in Canada for the purposes of claims to refugee status and the removal process. The government also proposed an amendment that would allow only the Minister to exclude security risks from Canada (EIC 1988, Address by Barbara McDougall, and Backgrounder; *The Gazette* (Montreal) 13 July 1988).

In response, the Senate Committee indicated it still wished further changes, particularly to the clauses in Bill C-55 on safe return. On 15 July 1988 the Minister of Employment and Immigration made one further concession, promising to amend Bill C-55, once it was proclaimed, to ensure that refugee claimants turned away from Canada will not then be sent away from the safe third country that allows them to return (or that will give them a hearing on the merits of their

claim). Under such an amendment, claimants could be sent back *only to countries that they had* "lawful authority to be in". This, the Minister argued, would prevent claimants being put "into orbit" by countries that allowed claimants to return but would not necessarily allow them to stay (*The Ottawa Citizen* 15 July 1988; *Kitchener-Waterloo Record* 16 July 1988).

Despite its lack of enthusiasm and major reservations, the Senate Committee replied by recommending concurrence with both bills on 19 July, and on 21 July 1988 both bills were passed by the Senate and received royal assent (*The Ottawa Citizen*, 20 July 1988; *The Gazette* (Montreal) 22 July 1988; *The Toronto Star*, 23 July 1988). The provisions for turning back ships were proclaimed on 3 October and will expire in June 1989; by then they will no longer necessary because the new system (which came into effect on 1 January 1989) will be fully in place and, the government argues, be able to cope with any large influxes without such powers (*The Gazette* (Montreal) 22 July 1988; *The Globe and Mail* 26 July 1988; *The Ottawa Citizen* 4 October 1988).

With passage of the two bills, a long battle was over. But many issues remain -- some concerned with detailed points in the new laws, others concerned with more general aspects of refugee policy, of which the new acts are but the latest manifestation. Thus, on reflection, debate about Canadian refugee policy was clearly not resolved on 21 July 1988. In the next section we therefore turn to the continuing debate about this policy and to reflect on some of the likely consequences of the new laws.

7. A Critique of Canadian Refugee Policy

The new measures passed in 1988 and the policies of which they are part have been the object of intense debate. It is the purpose of this section to consider both sides of this argument -- that is, the views of the government and their opponents -- before indicating some of the implications and potential consequences of this controversy.

7.1 The Opponents' Position

Those that oppose government policy begin with several general observations. It is instructive to compare Canada's pattern of refugee admissions from abroad with world patterns of refugees by source country, because this gives some sense of Canada's priorities in meeting regional needs. Some interesting contrasts emerge. Of the total number of refugees Canada admitted from abroad in 1986, 31 per cent came from Eastern Europe, 35 per cent from Southeast Asia and 21 per cent from Latin America (Table 2). Yet, according to USCR data on the sources of refugees in need of aid and/or protection, only 6 per cent of the world's total were from countries in East Asia and the Pacific, 3 per cent from Latin America and the Caribbean, and 0.2 per cent from Europe.

By contrast, the Middle East/South Asia region produced 64 per cent of refugees needing aid and/or protection in 1986, and Africa was the source of a further 26 per cent (USCR 1987, 36-37). However, only 6 per cent of refugees admitted to Canada from abroad in that year were from the Middle East/West Asia region, and only 7 per cent were from Africa. Thus Canada's pattern of admissions has emphasized regions that are not the major sources of refugees and has given relatively little attention to the regions that are responsible for 90 per cent of the world's refugees.

The contrasts are equally marked at the level of individual countries. Forty per cent of the world's refugees in need of aid and/or protection in 1986 were from Afghanistan, 18 per cent from Palestine and 11 per cent from Ethiopia (USCR 1987, 36-37). Yet Canada has devoted only 2 per

cent of its admissions to refugees from Afghanistan, 5 per cent to those from Ethiopia, and a fraction of one per cent to those from the Palestine area (Table 2). In numerical terms these contrasts are more stark. By 1986, 4.7 million refugees had fled Afghanistan and 1.2 million had left Ethiopia; however, in that year, Canada admitted a total of 876 Ethiopian and 302 Afghan refugees from abroad. Instead, Canada concentrated its attention on other countries: 3,680 refugees were admitted from Vietnam, 3,591 from Poland and 2,186 from El Salvador in 1986, and these flows represented 55 per cent of all refugee admissions to Canada from overseas that year. Yet these three countries were the source of only 1.98 per cent of the world's population in need of aid and/or protection in 1986 (USCR 1987, 36-37; Table 2).

These data on refugees admitted from overseas combine totals for Convention refugees and the Designated Classes, the latter being individuals in refugee-like situations, "victims of oppression or displacement who do not ordinarily fit the definition of a United Nations Convention Refugee" (EIC 1987h, 2). The available data show that 79 per cent of all refugees admitted from overseas between 1980 and 1987 entered Canada as members of the Designated Classes (EIC Landed Immigrant Data System, unpublished tabulations, 3 November 1987, 26 April 1988). Thus only 21 per cent of refugees admitted over this period were Convention refugees (this includes those admitted as Convention refugees by inland determination). Because two of the Designated Classes focus solely on a particular region, as well as on a particular group, it is possible to disaggregate their impact by region. Thus, recent statistics show that the Self-Exiled Persons Class represented 82 per cent of all refugee admissions from Eastern Europe over the period 1979 to 1987, while the Indochinese Designated Class accounted for all refugee admissions from Indochina over the period (Table 1; EIC 1987h, 1-2; Neuwirth and Rogge 1988).

Hathaway has noted that political and domestic economic considerations have largely dictated the description of the three classes and has argued that the need for protection is inverse to the stringency of the threshold tests imposed by the regulations governing the three Designated Classes. Thus, he observes, the most open-ended class (Self-Exiled Persons) is designed for well-educated and anti-communist East Europeans who are treated as "neo-refugees", to use his term, simply because they no longer wish to reside in their country of origin. The Indochinese Designated Class is more restricted, despite the anti-communist convictions of this group, because of a fear of massive demands for immigration from this region. The Political Prisoners and Oppressed Persons Designated Class is the most stringent of the three classes, requiring individuals to demonstrate, for example, past persecution before they qualify for admission under the program. This class consists of Latin Americans, the majority of whom have opposed pro-Western governments.

Hathaway also observes that the full impact of the Designated Classes is difficult to judge for two reasons. First, Designated Class and Convention refugee admissions may be combined to fill the allotments of the annual refugee plan. As a result, "Canada's commitment to resettlement work in favour of Convention Refugees is susceptible to largely invisible circumspection", because immigration and consular officials can authorize an admission under the Designated Classes in lieu of a Convention refugee admission. Second, most published data do not distinguish between Convention Refugees and the Designated Classes when reporting sponsorship and do not make it clear that the two classes have been combined. Thus,

> because many of those admitted under the designated class policy, and in particular the members of the Self-Exiled Persons Designated Class, are not refugees at all, the sponsorship allocation statistics

> give the impression of a larger Canadian contribution to the relief of the international burden than is actually the case (Hathaway 1988a).

This comment applies beyond sponsorship to all cases where government statistics on refugee admissions are used without an explanation of the role of the Designated Classes.

A similar situation occurs at the level of overall statistics for Canada's refugee and humanitarian programs, statistics that government officials often cite to demonstrate Canada's humanitarianism. However, unless it is made clear that such totals include many who are not Convention refugees, it is possible that a misleading picture may be drawn.

It is therefore important to recognize that the overall statistics include the Designated Classes and individuals admitted under the Special Measures Programs, which are designed to permit individuals experiencing an adverse domestic situation to benefit from the functional equivalent of temporary asylum and even permanent residence. Individuals are admitted on humanitarian grounds at the discretion of the federal cabinet; they are not admitted or defined as refugees. Data show that for the six countries currently involved in these programs, Special Program admissions represented 20,739 admissions between 1982 and 1986, or 41 per cent of the total number of "refugee and humanitarian programs admissions" from these countries. Indeed, for Lebanon and Sri Lanka only 1.4 per cent and 2.8 per cent, respectively, of refugee and humanitarian admissions over this period were under the Convention Refugee Class, the remainder being admitted under the Special Measures Programs (EIC Policy and Program Development Branch, Refugee Affairs Division 1984, 39-41; 1985, 35-36; 1986, 62-63; 1987b, 42-43).[15] Again, therefore, statistics on refugee and humanitarian admissions may provide a misleading picture of Canada's international role in helping those defined by the international community as refugees unless it is made clear that those admitted under the Special Measures Programs have not had to meet the same criteria as those admitted under the refugee classes.

With these caveats in mind, we turn to Canada's achievements between 1982 and 1987. Table 9 shows that there were 125,890 "refugee and humanitarian program admissions" to Canada over this period. This appears to be an impressive contribution to world needs, but if it is seen in terms of those of concern to the international community, that is, those defined as refugees in need of international aid and protection, then the figure must be adjusted to reflect those admitted to Canada as Convention refugees.

To do this we first subtract the Special Measures admissions, which at 23,345 represented 18.6 per cent of all "refugee and humanitarian program admissions" (Table 9). Of the 81.4 per cent that remain, over the period 1982 to 1987, 72,178 people were admitted as members of the Designated Classes and 31,565 as Convention refugees (EIC Landed Immigrant Data System, unpublished tabulations, 3 November 1987, 26 April 1988). Thus, of the total "refugee and humanitarian program admissions" to Canada over the period, only 25 per cent were Convention refugees.

Not only is Canada's contribution to refugee resettlement much smaller than it first appears, but 75 per cent of all admissions under refugee and humanitarian programs are made up of individuals who are not Convention refugees. Indeed, three-quarters of total admissions are individuals admitted under special programs carefully targeted to a limited range of identified countries and to specific individuals who meet a different range of criteria than those required of refugees. Thus the number of refugees admitted is restricted and the areas they come from are carefully controlled by the operation of these programs.

But this is not all. Critics argue that those admitted from abroad under these programs are carefully selected by Canadian officials according to their ability to establish themselves successfully in Canada, a criterion that has meant that only those with skills of value to the Canadian economy will be chosen; those with no accumulated wealth or employment potential in this country will not be selected. The fact that very few women or disabled refugees are selected from abroad illustrates this point. While 75 to 80 per cent of the world's refugees are women and children, 80 per cent of Canada's refugee entrants are men, and two-thirds of the women admitted are dependants; very few single mothers are admitted. Other statistics show that of the 13,679 refugees who became permanent residents in 1986, 61 per cent were men (*Refugees* May 1985, 5; Seager and Olson 1986, 27; Boyd 1987, 9; Rusu 1987, 3, 14; Joel 1988, 13-18; USCR 1988, 30). Data from EIC show that from 1979 to June 1986, only 30 refugees were admitted under the Handicapped Refugee Program, 300 disabled refugees under the Joint Assistance Program, and 900 under a tubercular refugee program (EIC, Policy and Program Development Branch, Refugee Affairs Division 1986, 12-13).

Difficulties in obtaining federal-provincial agreements on health care and traditional concerns about the health of immigrants are factors here, but the fact remains that women and handicapped refugees have been largely ignored because selection procedures assume such individuals will not be able to support themselves in Canada. Indeed, recent evidence concerning the Administrative Review shows that this problem continues; critics have noted the great problem single mothers have had in meeting the successful establishment criteria of the Review and have pointed to the very small number of such people who have been allowed to stay (confidential interview, Parkdale Legal Clinic, March 1988).

Thus, critics argue that Canada's pattern of refugee admissions is one that has been biased against Convention refugees, against regions of the world with large refugee populations (principally Africa and the Middle East/West Asia), against refugees from countries with anti-communist governments, and against refugees who may be unable to support themselves or contribute to the Canadian economy once in this country. Refugees are carefully selected according to these biases.

Opponents of government refugee policy go on to argue that this is only one manifestation of the control concept that has governed Canadian refugee policy since it first began. This concept has been built upon three basic propositions: first, that entry into Canada must be controlled -- indeed, it is a country's sovereign right to control its borders and to control immigration; second, that those allowed to enter must be selected carefully to avoid 'undesirables', a basic feature of immigration policy; and third, that selection should focus on those that will not be a drain on the Canadian economy and will make positive contributions to the economy, again a standard feature of Canadian immigration policy since farmers were brought over to open up the Prairies.

These propositions, based on apparently uncontroversial tenets of immigration policy, act together to produce a concept of refugee policy as one that must prevent uncontrolled refugee movement, so that no refugee should be able to 'select' Canada and arrive spontaneously. Rather, Canada must select them, and their entry must be controlled. Critics believe that this 'concept of control' -- which views refugees as immigrants and argues that their entry must be controlled in the same way according to specific criteria -- has resisted all attempts at alteration, is the basis for the government's laws passed in 1988, and can be seen firmly entrenched in the operation of current policy. Donald Avery, Gerald Dirks and Reg Whitaker have shown that this concept was easily and readily applied during most of this century. Refugees were discriminated against on the basis of their ethnicity, their religious or political beliefs, their colour, or their lack of economic abilities. Those who did not meet the country's selection criteria were not admitted, and Canada's shameful

behaviour with respect to Jewish refugees is only one example of an approach that continued during the Cold War using security concerns as the means of control (Dirks 1977, Avery 1979, Whitaker 1987).

After 1951 this approach became more difficult to apply in an overt fashion because international law had established that *bona fide* refugees had rights of status determination and *non-refoulement*. Because of this, refugees now had a right of non-rejection that immigrants did not have and could not be governed by policies based on principles of immigration. However, instead of recognizing that this basic contradiction called for a new approach to refugee policy, it could be argued that Canadian officials perpetuated the concept of control by not acceding to the 1951 Convention for 18 years. Certainly, by doing so Canada retained full control of refugee admissions, because it did not recognize the limitations that the Convention placed upon its practices. As Canada helped draft the Convention, such a delay might indicate the fear that officials had of its consequences.

Even after Canada acceded to the Convention and Protocol in 1969, traditional procedures continued because the government did not set up formal methods for implementing the Convention and Protocol. Only in 1976 were such methods first included in Canadian law, 25 years after the UN Convention. In incorporating international standards, Canada was careful, however, to adopt only the more restrictive refugee definition of the Convention rather than the functionally wider definition the UNHCR uses in providing aid and protection or other such definitions; this has had the effect of limiting those that are eligible (Grey 1988).

The 1976 legislation differentiated between two refugee streams. The first included those selected from abroad in accordance with annual refugee allocation plans, while the second concerned those admitted by the inland determination system. It could be argued that the first produced no difficulties for the concept of control because international law did not dictate how resettlement should occur. As a result, refugees could be chosen from abroad in accordance with criteria Canada laid down, from regions that Canada preferred, and according to allocations that favoured specific regions. Indeed, it is possible to suggest that the overseas admission of refugees has become simply another component of Canada's immigration program and has been increasingly treated as such.

The second stream perhaps posed a greater threat to control; under international and domestic law it was now illegal to return refugees who had managed to flee to Canada and claim refugee status in this country, however 'undesirable' they may be in their beliefs or abilities. As a result, the inland determination system may have been seen as the major difficulty in maintaining control over refugee admissions, and from 1978 on (when the 1976 Act came into force), the operation of this system was carefully observed. Recent evidence of attempts by the Department of External Affairs to reverse an RSAC decision shows just how close that observation was (*The Globe and Mail* 16 May 1988, A1, A9). The *Singh* decision likely added to the concerns of those who saw the inland determination system as the weak link in Canada's ability to control refugee policy, for it showed that the Charter of Rights and Freedoms applied to asylum-seekers, making it even harder to return them to their countries of origin. These concerns were soon to triumph, for despite the small numbers admitted by inland determination and the apparent belief as late as 1986 that the system was functioning well enough to require only moderate reform, by 1987 the government had tabled two bills that radically affected the ability of refugees to seek asylum in Canada (Grey 1988; Jackman 1988).

To do so, the critics argue, those responsible for the legislation had to tackle two basic questions: how to limit access to determination without violating international obligations, and how to persuade the public that the small numbers admitted posed such a threat to Canada's immigration system that legislation was necessary. The first was achieved with legislation that made skilful use of the grey areas in international law and by borrowing methods developed in other countries. Thus, as the Senate noted, Canada proposed to exploit the ambiguity of the refugee status of those coming from safe third countries and proposed its own form of interdiction in Bills C-55 and C-84. It could be argued that the two new acts, together with the visa controls announced in 1986-87, form a comprehensive package that attempts to prevent asylum-seekers ever leaving the country they wish to flee for Canada, to deter those who would circumvent these restrictions by the use of false papers, and to arrange for the speedy removal of those that do arrive in Canada but do not meet the new law's strict standards of eligibility and credibility. These measures serve to control access through the inland system, but to do so it was necessary, as shown by the Senate Committee, to propose legislation that some consider illegal under international law and Canada's Constitution.

The second step was to convince the public that the measures introduced to limit access to determination are essential. This has been done by suggesting that Canada is in immediate danger of a refugee crisis unless such action is taken. Informed debate on this issue would, of course, be useful. But the fact that the government has focused on what it calls the grave risk that Canada will be swamped with large numbers of asylum-seekers, and that the evidence it uses to support this contention is difficult to interpret, may indicate that the real purpose behind the debate is not to educate, but to rally support for a curtailment of the inland determination system.

Four examples illustrate the possibility that this hidden agenda exists. First, the government made much use of the arrival of two boat loads of asylum-seekers to legitimate the need for Bill C-84. Yet the fact that these arrivals represented a very small proportion of all refugees admitted to Canada was not mentioned. Second, the government sought to suggest that many asylum-seekers are illegal immigrants making abusive claims, thus threatening the integrity of Canada's immigration programs. While this suggestion galvanizes public attention, it ignores the fact that many refugees must use unorthodox methods to escape their persecutors; evidence shows that most abuse of immigration programs occurs outside the inland determination system. Thus, the Senate Report on Bill C-84 argued that the bill would do little to reduce abuse because the majority of abusive claims were by individuals arriving in Canada with legitimate papers and visas (as visitors, for example).

Third, the government sought to reinforce its argument by issuing ever-increasing statistics concerning the number of individuals claiming refugee status in this country. Thus, the EIC has supplied the following figures for "Refugee Claims in Canada, 1981-1987 (Actual and Projected)" (1987b, Backgrounder A, Attachment 3):

1981	3,450	
1982	3,300	
1983	6,100	
1984	7,100	
1985	8,400	
1986	18,000	
1987	25,000	(projected)

That these numbers should continue to increase, despite the visa controls of 1986, is curious, say the critics, if the controls are as effective as the government says there are. In addition, that the figures show a substantial increase is surprising in view of the RSAC data discussed earlier; that the statistics indicate an approaching crisis is strange in light of the RSAC view that there is no crisis. Opponents of government policy have suggested that the reason for these anomalies is that the government's refugee claims figures are not all new claims, nor do they represent the backlog, but are an amalgam of incoming claims, individuals that immigration officials suspect may make a claim, and all of those at any stage of the entire refugee determination procedure. Thus, the figures include people who will never make a claim (such as travellers), people whose immigration inquiry has begun but will never be completed because they have left Canada, died, married a Canadian or been admitted for humanitarian reasons, those on minister's permits, and individuals who will not appeal RSAC and IAB decisions. The figures even include those admitted on minister's permits as part of the fast track attempt to reduce refugee claimant numbers, despite the fact that many may never make refugee claims and that more than half of them can no longer be traced.

Under these circumstances, the government data can give no impression of the true pattern of incoming claims and can be of little value in gauging the size of the backlog either. The most reliable data remain those supplied by the RSAC; the irony is that from these figures it is clear that the greatest increase in claims occurred when the government introduced its reform measures in 1986 (Joseph Stern, Chairman, Refugee Status Advisory, Committee, personal commnication April 29, 1988).

A fourth step, the critics suggest, has been for the government to use the international debate on a 'refugee crisis' to convince the public of the need for action against asylum-seekers. Undoubtedly, the international refugee situation is of concern, and many states have sought to introduce deterrence. Moreover, as refugees gain access to faster and further reaching means of transportation, countries such as Canada have had their geographical isolation broken, becoming countries of first asylum. These are legitimate concerns and part of a worldwide debate that should take place to address the plight of the refugee. However, the manner in which the government has handled the public debate suggests that they are less interested in an objective debate of the refugee problem, than in suggesting that Canada is in danger of being swamped by refugees. Thus, although statistics on world refugee populations have been quoted, there has been no attempt to show that few of these individuals would ever come to Canada. In fact, the majority of flows are regional, not global, the majority of refugees would prefer repatriation or local integration, and the majority would never be able to afford the cost of reaching this country. Discussion in Canada has failed to recognize the achievements of other countries in helping refugees or the need for international solutions.

Other critics have observed further elements in what they see as the government strategy, some even going so far as to argue that the government's apparent difficulties in reforming the system are deliberate. Examples of this include the rise in asylum-seekers that took place when changes were implemented, the Federal Court's ruling in March 1988 (since overturned) that IAB rulings may be biased by the proposed legislation, and the reduction of RSAC staff (prior to the creation of a new body), which resulted in further backlogs (Fraser 1988, A1-A2; Sallot 1988, A4). Such steps, it is argued, are designed to encourage the ultimate collapse of the system, enabling the development of a new system or the use of the 'notwithstanding clause' to enable refugee legislation to override constitutional guarantees (Jackman 1988). Such opinions are a symptom of the suspicion the government has created.

It could be argued that these strategies will achieve the steps necessary to ensure that the inland determination system is controlled. The flow will be reduced to a small trickle of carefully vetted refugees, and those that need help will be forced to turn to the overseas selection programs. Indeed, it is perhaps a measure of the importance of the 'concept of control' that it has been felt necessary to develop such legislation and to resort to such means to secure its passage. Thus, while critics condemn the two acts responsible for the present attack on the refugee system, it is wrong to overlook the fact that these two laws are merely the latest manifestation of an approach to controlling refugee admissions in the past, an approach that will not change unless fundamental changes occur in the government's stance on refugee issues.

7.2 The Government's Position

The arguments put forward by supporters of the new legislation and of the government's general position on refugee policy are naturally different but equally persuasive. The government and its supporters have argued three main points: that Canada's response to refugees has been fair; that the 1976 law has given rise to a situation that is not fair to Canada's need to control its borders and to administer a sound immigration policy; and, that the new legislation is a fair response to the need for reform.

First, in terms of Canada's response to refugees, government officials point out that this country has an outstanding overall record on resettlement. In a statement to the House of Commons on 21 May 1986, the Minister of State for Immigration remarked,

> As a Canadian, I know we can be proud of our tradition of humanitarianism. More than a half-million refugees have settled in Canada since the Second World War. For the past six years, over 125,000 refugees and designated class immigrants have found new homes in Canada. Thousands of others have been helped by humanitarian measures developed to deal with special, unexpected circumstances (EIC, Policy and Program Development Branch, Refugee Affairs Division 1986, 43).

The data supporting this statement can be found in Tables 8 and Table 9. Canada has also shown a remarkable capacity to respond to individual crises: thus 60,049 people were admitted to Canada between 1979 and 1980 under the Indochinese Refugee Program (EIC 1982, 32).

The nature of these achievements can be recognized only by comparison with the records of other countries. Canada's record of resettlement in 1986 was second only to that of the United States in terms of numbers resettled; Canada actually led the world when data are scaled by the population of each country (A. Grushman, EIC Refugee Determination Task Force, October 1988). Over the decade 1975 to 1985, USCR statistics show that Canada ranked third in terms of the world resettlement effort: its ratio of refugees to total population (1:146) being surpassed only by Australia (1:125) and Namibia (1:28) (USCR 1986, 40; EIC Policy and Program Development Branch, Refugee Affairs Division 1987b, 53).

Critics have, suggested these contributions are not as noteworthy as they first appear because many of the admissions are not Convention refugees. However, officials at EIC emphasize that to distinguish between admissions under the various Convention refugee and humanitarian programs (including the Designated Classes) is irrelevant. Indeed, the fact that only a minority are admitted as Convention refugees is not an important consideration for the Commission. This is because being defined as a Convention refugee is not a criterion for resettlement in Canada -- and

it is resettlement that the Commission sees as its important goal in this respect, while its pre-eminent concern is a humanitarian one (Raphael Girard, Director General, Refugee Affairs, EIC, personal communication October 1988).

Beyond these points, the distinction being made by critics is unfair because it ignores the fact that most of the individuals admitted under Canada's humanitarian programs would have been admitted as Convention refugees if time and circumstances had allowed their status to be determined. It ignores the fact that Canada exceeds the requirements of the international refugee definition both in the field and in Canada -- in the latter case, recognizing the special needs of people who might otherwise be deported and creating the facility for temporary asylum, which many commentators say is a necessary part of a solution to the plight of refugees. It ignores the fact that in cases of mass exodus, Canada (and other countries) does not test individual status in the field; this is both difficult to do and stands in the way of speedy resettlement -- the immediate remedy to their plight. In addition, the distinction ignores the fact that Canada's obligations to refugees under Article 3(g) of the Immigration Act, 1976 is to provide protection and to uphold Canada's humanitarian traditions (Raphael Girard, October 1988).

Lastly, the implication that Canada's humanitarian admissions are in some sense less worthwhile than Convention refugee admissions, or that Canada should concentrate only on Convention refugee landings, closing down settlement opportunities for those who do not meet what some see as narrow, legalistic criteria, fails to meet the needs of those who require Canada's humanitarian help. Indeed, since there is no accurate way of measuring the extent of 'humanitarian need' in the world, it is not possible to assess Canada's contribution to meeting this need -- but it would be wrong to forget or dismiss this achievement by concentrating only on Convention refugees.

With respect to other criticisms of its resettlement record, officials at EIC admit that while there was a bias in pre-1967 admissions to Canada, this tendency was found in every Western country's approach to the issue because the Convention only defined Europeans as refugees (Raphael Girard, October 1988; Weiner 1988).

It should be recognized that Canada only really began planning global refugee quotas in 1978; thereafter these annual levels were decided through discussion with the UNHCR, NGOs and church groups, and have their approval. As recent examples of this process, the quotas are based on what appear to be low resettlement figures for Afghanistan and Latin America, but this is because at the international level, repatriation is the preferred solution, and because Latin Americans are being resettled locally in first asylum countries in Central America. Indeed, by failing to recognize that the international community does not intend that all refugees should be eligible for resettlement in third countries, critics have generally misunderstood the rationale for Canada's choices (Raphael Girard, October 1988).

In reply to the criticism that Canada's response to refugee admissions has tended to ignore women, two points should be noted. First, 57 per cent of refugees and other humanitarian cases are women and children. Fully 26 per cent are female heads of family. It is the spontaneous influx of asylum seekers -- which is not managed -- that is predominantly single males. Young men are more likely to be able to afford to reach Canada while women are more likely to be unable to flee persecution and leave their countries of origin because of family commitments (A. Grushman, October 1988). Second, the Commission has stressed its belief that this issue must be approached internationally, arguing that "our primary response has been to try to ensure that adequate protection is given to women refugees through the UNHCR and secondly to provide

resettlement possibilities when necessary" (EIC Policy and Program Development Branch, Refugee Affairs Division 1986, 11).

Government officials observe that in assessing Canada's response to the plight of refugees it would be wrong to focus only on the number of refugees Canada has resettled -- important though that is. In fact, Canada's refugee policy is multi-facetted. It includes external assistance to refugees, political initiatives and immigration. Thus, officials stress, immigration issues are far from the whole story (Raphael Girard, October 1988). Thus, it is important to recognize the cost of resettlement that Canada has borne. It is estimated that in 1987-88 the government spent $115 million for refugee resettlement and language retraining (Weiner 1988). Nor should Canada's overseas role be omitted. This point is well made in a recent issue of the Commission's publication, *Refugee Perspectives*:

> Canada has a long and honourable tradition of refugee and humanitarian assistance ... Canada is also one of the leading contributors to international humanitarian aid agencies our disbursements to such organizations totalled $34,500,000 in 1982-83, of which more than half was donated to the United Nations High Commissioner for Refugees. When the size of our population and gross national product are taken into account, Canada's record of aid to refugees in recent years has been second to none (EIC, Policy and Program Development Branch, Refugee Affairs Division 1984, 3).

A more recent edition of this report indicates that during the fiscal year 1986-87, Canada channelled $18,255,000 to the UNHCR and $9.4 million to UNRWA through the Canadian International Development Agency (CIDA). In addition, $14 million in food aid was earmarked for Afghan refugees in Pakistan. "Thus," the report observes, "in keeping with its own humanitarian tradition, and in a spirit of equitable burden-sharing, Canada ranks among the main international donors to refugee programs overseas, as well as being a major resettlement country" (EIC, Policy and Program Development Branch, Refugee Affairs Division 1987b, 29-30).

In a 1988 speech in Montreal, Mr. Weiner, then Minister of State for Immigration, said Canada's overall foreign aid programs should be seen as important contributors to Canada's approach to world refugee problems because they attacked the root causes of the phenomenon. Thus, he noted, it was important to include the almost $2.2 billion given in official development aid through CIDA and the $319 million given to agencies of the United Nations and other international organizations during the fiscal year 1986-87. If these added to Canada's aid to international organizations, he observed, Canada's aggregate contributions to international relief "are second only to the United States". As Weiner remarked,

> A country with the most generous refugee policy in the world has little claim to moral rectitude if, at the same time, it is an indiscriminate purveyor of the arms and weapons which create the refugee in the first place. And conversely, a nation which takes no refugees, but effectively delivers development aid to the Third World, may actually be doing more to eliminate the conditions which give rise to refugees than most of us (Weiner 1988).

Finally, it is necessary to remember Canada's contributions in the area of repatriation. The Commission has followed the UNHCR in arguing that "most desirable solution for refugee

situations is voluntary repatriation when appropriate conditions exist in the country of origin". In keeping with this belief, CIDA has given the UNHCR $1.45 million to support returnee programs in Africa and $200,000 to support and encourage the repatriation of Laotian refugees in Thailand (EIC, Policy and Program Development Branch, Refugee Affairs Division 1987b, 30). Beyond this, Canada has recently become involved in several innovative projects designed to alleviate spontaneous movement a scheme to provide funds to the Turkish government to aid resettlement in that country is one example of these endeavours (Raphael Girard, October 1988).

In summary, the government argues, Canada's response to the plight of refugees has been both considerable in its own right and a world leader when compared with the contributions of other nations. Indeed, the importance of Canada's achievements has been internationally recognized. Canada received the UNHCR's Nansen Medal on November 13, 1986; the citation read "outstanding achievements attained in favour of refugees". This marked the first time that a country, rather than an individual, had been selected for award (USCR 1987, 72). In 1987, Joseph Stern, Chairman of the RSAC, was named the first recipient of the Raoul Wallenberg Humanitarian Award. These awards are an indication that Canada's achievements are recognized as of major importance by the global community, and it is necessary to bear this in mind when examining Canada's record.

Second, with respect to the collapse of the present system of refugee determination, Canadian government officials have been concerned that the real needs of genuine refugees -- that is, those meeting Convention definitions -- are being swamped and overlooked in the face of a rising tide of people abusing the system in order to win easy entry to Canada. The consequences are important not only for *bona fide* refugees; they are important because of the huge unnecessary costs involved in coping with large numbers of unfounded refugee claims; because the public is beginning to lose faith in the value of the system; and because Canada is becoming perceived internationally as an easy place to enter by falsely claiming refugee status -- a perception that engenders ever increasing numbers of claimants.

It is for these reasons that Raphael Girard, then Director of EIC's Refugee Determination Task Force, argued that

> The greatest problem affecting the determination system in Canada at present is illegal migration. It is a problem that is not static or on the wane; it is dynamic, growing and if left uncombatted, is going to make further inroads into the international system of protection than it already has (Girard 1988).

The evidence for this assertion is not hard to find. Data presented in Section 6 show that the number of refugee claimants has risen over recent years. Moreover, RSAC's average rejection rate of approximately 75 per cent shows that most of those arriving on Canada's borders and claiming refugee status are not genuine refugees (in the Convention sense) and are therefore, according to the government, by definition "illegal immigrants" abusing the refugee determination system. Government commentators have observed that the majority of these illegal entrants are economic migrants. Louise Robic, the Quebec Minister of Immigration, has observed that

> Many of those people belong to another type of immigration, namely the kind of immigration arising from the economic inequalities haunting our planet (Robic 1988).

As Minister of Employment and Immigration, Benoît Bouchard was more blunt about trends in refugee claims, arguing that "we know on the basis of experience that 70 per cent of these claims will be made by people who are in fact economic migrants" (Bouchard 1988). Certainly, the public perception that this was so was strengthened by several publicized incidents. As Jim Hawkes, Chairman of the House of Commons Standing Committee on Labour, Employment and Immigration, observed,

> The most blatant abuse has come from the 3,500 claimants from Portugal, and the over 2,000 from Turkey and Brazil -- countries that are not refugee-producing countries (Hawkes 1988).

Another demonstration that most of claimants are not in need of protection -- as understood by the Convention -- comes from an EIC study of 2,036 refugee claimants who arrived at major Canadian ports of entry between 10 August 1987 and 27 September 1987. The study was concerned to discover how many claimants "in conceptual terms could be legitimately excluded from the full determination process", that is, how many people would not be eligible protection as Convention refugees in Canada even though they might fully meet the internationally accepted definition (Girard 1988).

Three groups were identified. The first are those who had access to protection in another country immediately before coming to Canada. In this respect, the analysis showed that 80 per cent of the people came from a country other than their own. As Girard observes, "they are not fugitives directly from the country that created whatever substance there is to the refugee claim. Fully a third of that 80 per cent came from Western European countries, "most of which have an unimpeachable record of adherence to their Convention obligations". Of the 20 per cent who came directly from their own countries and who might be escapees from persecution, more than half came from countries that had little or no incidence of successful refugee claims in Canada (Girard 1988). In other words, only a very small proportion of these claimants could legitimately demonstrate their primary need for Canada's protection.

The second group consisted of individuals who had already claimed in Canada or had been recognized as refugees in another country to which they have right of return. The third group consisted of a very small group of individuals who would be judged as prohibited under the security or criminal provisions of the Immigration Act and whose offences were of a sufficiently grave nature to warrant their *refoulement* in keeping with Article 33 of the 1951 Convention, assuming that they did in fact meet the Convention definition (Girard 1988).

In passing, it is worth noting that this survey is the basis for calculations, widely reported in the press, that up to 40 per cent of people who claim refugee status in Canada were already safe from persecution in another country and, under the new legislation, would therefore be eligible to be sent back to those countries where they could have sought refuge before coming to Canada (*The London Free Press* 20 July 1988; *The Gazette* (Montreal) 21 July 1988; *The Globe and Mail* 21 July 1988). The Commission argues that such statements are incorrect. In fact, their estimates show that the third country rejection rate was 20 per cent. The combination of safe third country and credibility rejection rates was 45 per cent; therefore, 55 per cent of claimants would receive a full hearing at the Immigration and Refugee Board (Girard, October 1988).

The consequences of the survey findings are perhaps threefold. First, government officials have emphasized that the entry of large numbers of individuals perceived to be abusing the refugee determination system damages public support for that system. As Benoît Bouchard noted,

> Unless refugee determination and immigration policy is seen to be managed effectively, then our ability to educate and thus mobilize public support for refugees will be diminished in proportion to the perception of abuse (Bouchard 1988).

Certainly, Canadian families who have waited long periods of time for family members to be allowed to immigrate to Canada cannot be blamed for feeling that individuals who seek to use the refugee system to gain quick entry to Canada, instead of applying through normal immigration channels, are guilty of queue jumping. As Jim Hawkes has remarked,

> When Canadians see other people with the same characteristics and no special need jumping the queue, then we have an erosion of public will and erosion of confidence (Hawkes 1988).

These statements are corroborated by an August 1988 Gallup poll, which found that 86 per cent of those interviewed felt that "queue-jumpers who come to Canada illegally and claim refugee status" should not be given priority over other would-be immigrants; 79 per cent felt such claimants should not enjoy the protection of the Charter (*The Gazette*, (Montreal) 1 September 1988).

Second, the numbers involved have placed large and unnecessary additional financial burdens upon federal and provincial governments. The Commission estimates that the average determination costs approximately $1,000, and the rising number of unfounded claims places unnecessary demands on their budget (*The Globe and Mail* 10 September 1988, A2).

Provincial governments, which must meet the welfare, health and education costs of refugee claimants awaiting determination, face huge bills because of the large numbers involved. The province of Quebec estimates that the total budget for the various provincial services provided to 23,000 refugee claimants awaiting decisions was between $60 and $70 million for 1986-87 (Simard 1988). Of course, some of this number will be shown to be genuine refugees, and many claimants have not been a burden on provincial treasuries because they have found jobs. Nevertheless, it can be seen that the costs of the system in place before Bills C-55 and C-84 became law have been substantial -- especially when it is recognized that Quebec's claimant population represents approximately half of those awaiting a decision in Canada (Simard 1988). Other parts of Canada report similar costs: by July 1988 it was observed that Metro Toronto had spent $18 million on welfare payments for refugee claimants since the beginning of the year -- an average of $3 million a month (*The Toronto Sun* 27 July 1988).

A third consequence of the large and growing number of unfounded refugee claims has been to put such a strain on Canada's refugee determination system that the system has been unable to cope. This has meant delays in processing claims and an increasing backlog of claims. Commentators such as Ratushny have noted that the 1976 Act was itself the cause of delays because of its lengthy procedures (see Section 6). It is estimated that it now takes an average of between five and seven years for a claim to be determined (Hawkes 1988). The existence of a backlog encourages more unfounded claims, because individuals know they have a lengthy stay in Canada ahead of them, even if they are eventually found not to be genuine refugees; it allows claimants time to settle in Canada and perhaps marry and establish families (thereby ensuring they can stay); it entails huge extra costs in terms of claimant support over the long determination period; and it encourages a perception that an amnesty must be declared (thus allowing those without genuine claims to stay) because that becomes the only way the system can possibly recover.

EIC officials deny that their statistics on the backlog are misleading. Senior officials who have worked with the Refugee Determination Task Force argue that "the statistics may have shortcomings but they are marginal. Certainly, any "corrections" would not affect the volumes significantly nor would the trend be altered" (Meyer Burstein, Director, Research and Analysis Directorate, Immigration, EIC, personal communication, July 1988). Raphael Girard, Director General of Refugee and Settlement Affairs, adds that RSAC figures on the backlog ignore those given minister's permits under the B-1 list approach and do not give a complete picture of the full backlog because RSAC enters the process only after EIC has become involved. Officials point out that more than 22,000 new claims were received in the final trimester of 1988, but not one of those cases is reflected in RSACs statistics. RSAC figures showed an increase in claimants later than the EIC numbers did because the backlog prevented the increasing number of claims reaching RSAC sooner; at the same time, the limit of 18 members of the IAB prevented any attempt significantly to increase the number of claims passing through the determination system. The statistics EIC now uses relate to the number of adjournments of inquiries held for the purposes of making refugee claims, and these represent the best measure available (previous efforts to count those arriving at ports of entry and track them through the system have failed, because 75 per cent of these claimants have failed to appear at their inquiry, most returning home). The statistics show a rising number of adjournments in the last few years, despite the imposition of visa controls, and clearly indicate that without such controls the determination system would be swamped (Raphael Girard, personal communication, October 1988).

The third main issue that government officials have sought to argue is that the new legislation is both an appropriate and a reasonable response to the difficulties described above. Such an argument is built upon a number of propositions.

The new legislation marks an attempt to get back to the spirit of the 1976 Act; it does not represent an attempt to alter the intent of that legislation. As evidence for this, the government argues that Bills C-55 and C-84 are procedural reforms, not policy reforms. The intent of the 1976 Act was that Canada would not actively engage in providing asylum but would help those who arrived and sought protection. The Act created only one channel for selection (not two, as others have suggested) -- the offshore selection channel -- and inland determination existed only as a passive channel to prevent *refoulement*. It should also be noted that the 1976 Act included powers of removal. For all these reasons, the provisions of Bills C-55 and C-84 are not changing Canada's refugee law; rather, they are returning it to the original purposes envisaged by the drafters of Canada's 1976 law (Raphael Girard, personal communication, October 1988).

With respect to other provisions in the legislation, EIC argues that the *Singh* decision requires there to be a hearing on the issue of protection -- but not on the merits of the claim. Therefore, a claimant who already has protection elsewhere, does not necessarily have to have a hearing on merit. (Claimants are of course entitled to have their full constitutional rights observed.) The new law observes this interpretation. Officials observe that the UNHCR has a referral role, and its overall contribution to the Canadian system should be seen in the context of this country's refugee assistance record. Importantly, the new law includes certain improvements that critics have not acknowledged. Thus, the most significant feature of Bill C-55 was that it gives genuine refugees a clear right to apply for landed immigrant status (Raphael Girard, personal communication, October 1988).

The government also argues that the new law maintains Canada's international obligations. By accepting the 1951 Convention, Canada agreed to accept the definition of 'refugee' included in that instrument and to be bound by its rules of *non-refoulement*. The new law ensures that Canada

abides by these obligations and upholds its international obligation to provide first asylum in the context of the difficult immigration situation described below and in accordance with Article 31 of the Convention. It should be recognized that policy initiatives soon to be adopted by the European Community will put in place a system whereby the duty of protecting individual asylum-seekers will be assigned to the countries concerned -- this will prevent protection being sought in more than one country, thereby reducing the number of claimants on the move in Europe. Canada's new legislation, by focusing on the protection needs of claimants, allows Canada to participate in these new developments (Raphael Girard, personal communication, October 1988).

Officials observe that the new legislation will introduce a system that is able to meet the demands placed upon it by Canada's immigration system, and one that Canada's immigration officers will be able to operate. They point out that some 35 million non-Canadians cross Canada's borders each year; of these some 6,000 a month are detected as being in violation of the Immigration Act and require investigation by immigration officials. In other words, to identify genuine refugees efficiently requires that a system as sensitive, time-consuming and expensive as the refugee determination system is not placed at the beginning of the immigration control process. Rather, the best solution is to adopt the screening procedures of the new legislation. The first stage hearing quickly establishes whether the individual in question requires protection and does this without a large involvement of resources (Raphael Girard, October 1988). The reforms recommended by Rabbi Plaut ignored these problems, as have those who say all asylum-seekers should be allowed into Canada and should receive a fair determination before a competent authority. As Raphael Girard argued at a recent conference on human rights,

> In that way, with speedy decision-making, they argue that abuse will diminish and eventually go away. It is a simple principle that everyone can certainly accept intellectually but it really does not work in practice. It does not work because of the convergence of immigration and refugee protection matters discussed by previous speakers. The refugee who appears at the border seeking our protection is indistinguishable from thousands of other would-be immigrants who appear without the proper kind of documents to validate their legal admission. Any rights available to the refugee are also available to anyone else willing to say that they are refugees (Girard 1988).

In terms of the timing of Bills C-55 and C-84, officials argue that this legislation reflects concerns present since 1978 when the previous law came into force. This is demonstrated by the flurry of investigations that ensued. The studies by Robinson, Ratushny and Plaut were all concerned with improving the balance between being open to the protection needs of genuine refugees and preventing abuse but reform was always delayed. The reforms put forward by Walter Maclean, as Minister of State for Immigration in 1986 attempted to introduce a more open system along the lines of the Plaut Report, but they were withdrawn in the face of opposition from NGOs and church groups demanding a universal access to determination. The *Singh* decision also played a part in delaying reform and -- the government argues -- created the backlog of claimants (because the IAB had a statutory limit of 18 members) and thus caused public opinion to turn against the needs of refugee claimants. Thus, it was only during 1987 and 1988 that the government was at last able to deal with the long-standing need for reform through Bill C-55. Bill C-84, on the other hand, as is well-recognized, was prompted by the arrival of the Sikh boat (Raphael Girard, personal communication, October 1988).

Finally, senior government officials deny critics' suggestions that the new acts are part of a secret agenda to reduce Canada's involvement in refugee assistance or illegal measures that cleverly exploit grey areas of international and domestic law. Indeed, it is observed that there is nothing to gain introducing measures known to be unacceptable under Canadian law and that every effort has been made to ensure that the legislation meets the requirements of the Charter (Meyer Burstein, personal communication, July 1988).

7.3 Implications of the Debate

Faced with these opposing views, it is fair to ask how it is possible to resolve the debate. This is by no means easy given the divergence of opinion. However, it is possible to identify the two principal areas of difference and to suggest that attempts to reconcile viewpoints must begin there.

The first concerns the goals of policy. The opponents of the government's position argue that Canada should be doing its utmost to admit those who need this country's protection. The government, it could be argued, believes that its principal role should be to protect Canada's sovereignty and borders against illegal migration; refugees should be assisted principally through Canada's overseas aid programs. Both positions are valid, but both also contain flaws. The opponent's position does not recognize the possibility that the number of asylum-seekers flowing into Canada is related to the stringency of controls of access and fails to recognize the full implications of visa controls. The government's position rests on interpretations of the intent of international and domestic legislation and on certain assumptions about adequate response. As argued earlier, Canada's refugee determination policy must be founded on a sensitive balance of the rights of refugees, the rights of Canadians, and Canada's international obligations. It is only in this balance that the opposing views can be reconciled.

The second major area of difficulty concerns definitions. Clear differences exist about the nature of the refugee and hence how many 'illegal immigrants' or non-genuine refugee claimants Canada receives a year, and even how large the backlog of claimants really is. The government has adopted a strict interpretation of the Convention, arguing that only the need for protection will serve to engage Canada's recognition of refugee status. Opponents of this position urge that a much wider definition should apply (recognizing all those in humanitarian need) and that refugee status be conferred on all who have not been granted a permanent durable solution by the international community. Much of the debate has occurred because different definitions have been used without being clearly stated or recognized. A clearer understanding of the terms of the debate would obviously enhance the possibilities for reconciliation.

However, areas of the debate remain that will be difficult to resolve without court rulings on points of law. Indeed, at this point it is worth recognizing that the legislation and the debate over policy will likely have a series of important consequences in the near future; their resolution will shape the ultimate reconciliation of the debate over refugee determination. Six such consequences should be noted

(1) There is likely to be a series of court challenges on points of law brought by NGOs and church groups on behalf of refugee claimants denied access to determination, or whose claims have been rejected. Thus, in August 1988 the Canadian Council for Refugees began a campaign to raise funds to change the "dangerous legislation" (Canadian Council of Refugees, August 1988). In September 1988, the Canadian Council of Churches announced it was raising

$300,000 for a court challenge to strike down sections of the two acts (*The Toronto Star* 3 September 1988). The Toronto-based Inter-Church Committee on Refugees has also indicated its intention to launch a court challenge (*The Gazette* (Montreal) 22 July 1988).

(2) The government is unlikely to be able to win broad approval for its approach to the designation of safe third countries. Thus, in June 1988, Amnesty International announced it would not sit on any consultative body the government had in mind to do this (*The Globe and Mail* 8 June 1988, A10). The Minister's announcement, on 28 December 1988, that the new legislation would go into effect with no country on the safe third country list "at the present time" merely highlights the serious nature of this problem (EIC 1988d).

(3) Church groups are likely to continue with activities that aid asylum-seekers, despite the new legislation. This may lead to the development of a 'sanctuary' or 'underground railway' movement in Canada.

(4) The first time Canada exercises its power to turn back a ship carrying refugee claimants will likely give rise to renewed public concern over the issue and will provoke renewed concern on the part of the international community.

(5) Canada's initial attempts to return individuals to safe third countries will be followed closely. Observers will wish to see whether other countries (already burdened with refugee claimants) will be prepared to accept their return. Even if this policy can be made operational, critics will question whether Canada is exacerbating the burden of the third countries involved.

(6) Finally, to enable the new determination procedures to function properly, the government must eliminate the current backlog. Before the Minister's announcement on 28 December 1988, an amnesty seemed the most likely response, but this raised a number of difficulties. Should those whom the government has said are illegal immigrants be allowed entry in this way? Should Canada reinforce the impression that it is an easy country to enter? On the other hand, how long can Canada deny those who have yet to have an initial hearing the ability to support themselves pending determination (*The Globe and Mail* September 10, 1988; *The Toronto Star* September 14, 1988; *The Edmonton Journal* October 3, 1988). The Minister's announcement that each claim would be assessed on an individual basis and that claimants quickly would be allowed to work allayed some of these fears (EIC 1988d). However, as critics have noted, the

full extent of the government's response can only be judged in retrospect.

The outcome of these consequences will profoundly shape the way Canada's new refugee policy is interpreted and will undoubtedly inform the continuing debate on the problem.

The overriding challenge is to develop a system that will prevent abuse and yet extend protection to all those that need it. To do this, it is necessary to decide, first, who are the individuals of concern and, second, how it is possible to meet those needs in ways that are procedurally and legally fair to all parties. The new law is but one step on the way to such a solution, and the resolution of its immediate consequences will allow ad hoc progress to be made. Whether other reforms are necessary or possible remains to be considered in the next section of this report.

8. Conclusions and Recommendations

When contemplating solutions to the refugee problems discussed in this report it is clear that one country's actions alone cannot solve all the difficulties described. The numbers involved are beyond the capacity of any single nation to help. The causes are transnational and as such require solution at an international level. However, stating the problem in these terms does not absolve a country of responsibility for helping or suggest that individual countries' efforts are pointless because of the enormity of the difficulties. Rather it suggests that solutions must be sought at the international level through concerted efforts at the national level. Moreover, it suggests that solutions must have an international, and not just a domestic, impact.

Clearly, the major world economic and military powers can make the largest contributions to relieving refugee-producing situations, but smaller powers, such as Canada, have an important role in removing the economic and military causes of exodus. Such countries can contribute through development aid, contributing to international bodies and supporting the work of such agencies, by peacekeeping activities, or by moral suasion and negotiation with their allies or protagonists alike to ease and eliminate refugee-producing situations. Ultimately, if large parts of the world are politically and economically inter-linked, we are all part of the cause of refugee problems, and we are also part of the potential solution. Every country that wishes to tackle the problems of refugees should therefore consider implementing policies that focus on international and national contributions to the issues involved.

International solutions

In the international arena a number of possibilities emerge. First, it is clear from the research discussed in Section 2 that external aggression, economic underdevelopment and human rights abuse are considered to be principal 'push' factors in generating refugee-producing situations. Therefore if countries wish to attack the 'root causes' of the mass exodus of refugees, policies must begin to eliminate these factors. Many scholars have commented that the United States should make refugees and the conditions that create them fundamental considerations in the formulation of its foreign policy, and that it should refrain from external interventions for these will produce refugees (Teitelbaum 1980, 58; Silk 1986, 44; Zolberg, Suhrke and Aguayo 1986, 167). The same might well be said about the USSR. Of major importance in this respect have been recent Soviet-American negotiations to end fighting not only in Afghanistan, but also Angola, Kampuchea and Nicaragua. Such talks are crucial if regional conflicts are to be ended and refugees enabled to return home. (Chardy 1988, 8A; Kamm 1988, B4).

These agreements -- as the Afghanistan case shows -- are only the first step in a long rebuilding process that must occur before people can return safely. Overcoming the effects of years of warfare, including the creation of competing internal factions and a devastated countryside, takes time and effort. However, this is where smaller powers have a vital role. Countries such as Canada can help in rebuilding by contributing peacekeeping forces and essential development aid.

According to some commentators, Canada also has a role in the Middle East and should become involved in establishing peace conferences in the region (Massoud 1988, 29). Peace in the Middle East, Central America and Afghanistan would be the first step toward alleviating the plight of millions of refugees, and everything Canada can do to help bring about the safe preconditions for their return will be a positive step against one of the root causes discussed in Section 2.

The other root cause, poverty and insufficient economic development, also needs attention. Teitelbaum has argued that to relieve one of the causes of refugees the United States must reconsider its development assistance, trade and economic policies toward the Third World, so that the developing countries receive greater economic benefits. This is advice that Canada and all developed nations should heed if the poverty cycle is to be broken (Teitelbaum 1980, 58). Certainly, the UN-appointed Group of Governmental Experts has urged that more attention be given to projects that alleviate the economic and social problems that may otherwise lead to refugee movements and thus avert mass exodus. Afghanistan, with the second worst infant mortality rate in the world in 1985 (182 deaths per 1,000 live births), and Ethiopia, with the lowest annual per capita GNP in the world (U.S.$110 in 1985), demonstrate that much remains to be done in this respect. Indeed, economic assistance could alleviate the effects of natural disasters such as the Ethiopian famine and thus contribute to assisting those made refugees by natural events, as the Group of Experts suggests is necessary (UN 1986, 16-18; Population Reference Bureau 1987). By increasing its development aid as much as possible, Canada would be able to assist in eliminating one of the major root causes of refugees, as well as contributing to the general economic development of Third World countries.

Human rights abuse -- the trigger for refugee movements -- must also be reduced and eliminated. The Group of Experts has argued that existing treaties are sufficient to do this, if only all parties could be made to observe the agreements (UN 1986, 16-18). Thus, it is necessary for countries such as Canada to do everything possible to persuade offending governments to change their behaviour and observe human rights. Indeed, one international organization has observed that

> the worldwide concern about the growing numbers of refugees has all too often been used to justify new restrictions on entry for asylum-seekers, rather than translated into pressure on governments to end the human rights violations that have forced so many into exile (Amnesty International 1987, 2).

To forward such work, Canada could well consider assisting the work of international organizations, the churches and neutral states as they seek peaceful mechanisms to resolve conflict. Canada could also use its own experience to help in the search for new political institutions that will sustain multi-ethnic societies where different ethnic communities feel confident of each other (Rupesinghe 1987, 496-97).

In moving from these background solutions to more immediate action, Smyser suggests that six principles should be observed:

(1) it is necessary to redouble efforts at finding long-term solutions, especially for those who have been in camps for many years;
(2) to offer asylum to those who need it but not to tempt those who do not;
(3) to support the countries of first asylum because their generosity is essential in the functioning of the entire refugee system;
(4) to make certain that no state carries more than its fair share of the burden;
(5) to address issues in a co-ordinated way so that policy decisions are made within the same framework;
(6) to preserve the basic elements of refugee protection and care from stagnation, neglect or abuse (Smyser 1987, 112).

It need hardly be added that the current policies of those countries practising deterrence --and, according to some critics, the new Canadian legislation -- threaten all these principles; the countries involved are thus threatening the attainment of any immediate solution of refugee problems or the prevention of new flows if they persist with such policies.

The suggestions of Sadruddin Aga Khan and Smyser repay examination. To avert new flows, the Special Rapporteur has suggested that an early warning system be developed to alert the world community to potential refugee flows. A Special Representative for Humanitarian Questions should be appointed to monitor such situations and should be empowered to de-politicize potential refugee-causing situations through negotiation or by use of a corps of humanitarian observers. Sadruddin Aga Khan has also emphasized the importance of economic factors. There is a continuing requirement to reappraise countries' economic needs in relation to the potential for mass exodus, for a standardization of international aid criteria, and for the integration of bi-lateral aid projects. All these approaches are well worth pursuing, and indeed the United Nations has taken steps to set up a monitoring office (Sadruddin Aga Khan 1981; Gordenker 1986, 167).

Once a refugee flow has begun, the Special Rapporteur has recommended the use of full censuses of refugees, to ensure that all receive aid, and that approaches in countries of asylum and source countries be co-ordinated. Interestingly, he has also recommended that international nationality, labour and refugee laws should be updated to develop a new international humanitarian order and that asylum practice should be reconsidered in this light. However, the chances for any new agreements on international refugee law to provide greater rights of asylum are virtually non-existent in today's climate of deterrence. Instead Goodwin-Gill's belief that the present legislation can be interpreted more widely must be pursued if expanded help for refugees is to be secured. Thus, he has argued that *non-refoulement* and resettlement are inextricably linked as part of the same process of obligation. At present states will recognize only a right of *non-refoulement*, and it is necessary to convince them that the present international legislation entails resettlement of refugees if it is to be fully observed. Certainly, in the present climate this is the only avenue in this regard (Sadruddin Aga Khan 1981; Goodwin-Gill 1983).

To alleviate the present refugee situation at a time of growing restriction, Smyser has suggested that different approaches are needed for the two principal groups involved. For those who have been refugees for many years, repatriation cannot be the answer. Therefore solutions should focus on a co-ordinated plan of resettlement to clear the refugee camps in the same way that the Orderly Departure Program has enabled refugees to leave Southeast Asia. In other areas, such

as Africa, efforts are best directed to integration; this should be fostered by redoubled efforts to implement the ICARA II concept of joint aid for economic development and refugee relief. For newly-arrived refugees, Smyser argues that the approach should be somewhat different, especially if Europe goes ahead with its plan to have a new refugee legislative regime in place by 1992. He argues that for this to happen without creating further problems it will be necessary, at the very least, for amnesty to occur in all countries moving toward deterrence, for countries to be very generous by offering asylum to all those who appear to qualify under the 1951 Convention, for much higher levels of assistance to be given to countries of first asylum, and for major refugee resettlement programs to be implemented in conjunction with the deterrence programs. With the exception of the last point, where Smyser uses current U.S. and Canadian practice as an example of what Europe must do, all of these suggestions fit the North American context as well and provide some valuable recommendations for Canada (Smyser 1987, 111-120).

Whether their purpose is to remove root causes, avert new flows, or even to reduce deterrence, all these recommendations require considerable effort and a much greater commitment of funds than has hitherto been the case. Indeed, it is interesting to observe that even the implementation of deterrence, if it is to be done without exacerbating the problem, involves far more concerted efforts to help refugees and countries of first asylum than many first imagine. This must give pause to those who suggest the deterrent measures as a means of lessening a commitment to help refugees. Indeed, as much effort may be required as would be involved in easing restrictions and adopting more durable solutions. Ultimately, of course, deterrence and restrictive measures can be no solution because they offer no hope of protection to those that need it. The durable solutions of resettlement, integration and repatriation remain the best answers and must be expanded until such time as accelerated attacks on the root causes of mass exodus have eliminated those causes. There is much, then, that Canada can do on an international scale to help refugees, especially in terms of increasing overseas aid and increasing resettlement opportunities in this country. But Canada's domestic policies are also important in the world context: by demonstrating its use of generous refugee policies, Canada can exert positive leadership in the international community.

Domestic Responses

Canada could take a series of positive domestic initiatives to ease the plight of refugees and reduce its own difficulties in dealing with their admission from overseas and the inland determination system. Not all of these suggestions need be implemented together to ensure improvement, for the adoption of several alone could produce considerable advances; nor do the suggestions constitute a comprehensive package, for such would be impossible to achieve. Further recommendations will depend on the course of change adopted, while others must follow from further research that needs to be done. Nevertheless, it is possible to map the broad contours of future improvements and to indicate the general direction that advances should take.

First, it is important that Canada should have an inland refugee determination system. Determination, as has been shown, is necessary not only to ensure that Canada is admitting genuine refugees, but also to protect the refugees themselves, for the act of determination recognizes their rights and identifies them as members of a distinct group to whom certain obligations, such as aid and protection, are owed. The key to this is the development of a fair determination system that is accessible to all refugee claimants. This recommendation has been the subject of much past research; the detailed recommendations necessary to implement it can be found in the work of Professor Ratushny, Rabbi Plaut and others. Their work suggests that the previous system was indeed flawed, but that it could be made to work efficiently by a number of moderate reforms, such as the development of oral hearings that allow claimants to be heard fairly by those

determining their cases. Whether the government's new legislation creates the fair determination system that is needed will have to be evaluated in the light of the results produced by the new laws.

Second, in implementing moderate reforms in this manner, the government must devote sufficient funds to the task. Stein has observed that if the resources devoted to work on Bills C-55 and C-84 had been spent on refugee determination, there would not have been a problem to deal with (Stein 1988). Certainly, it is clear that if adequate resources were devoted to staff and research, the necessary detailed work of refugee determination could be achieved far more rapidly than is the case now. Immigration officials have rightly pointed with concern to the fact that determination of the average claim takes five years (Dirks 1987). But deciding on this basis that access must be reduced is not the only conclusion possible. Rather, the inland determination system must be given the resources necessary to get its task done as efficiently, fairly and expeditiously as possible.

Third, pressure can be taken off Canada's refugee determination system by a variety of means, not the least of which are the international measures discussed above. But Canada should also consider increasing the number of refugees admitted from abroad. To do so would cut down the need for individuals, unable to wait for overseas selection because of the threat of imminent persecution, to flee to Canada and seek determination in this country. An expanded overseas selection program would be able to admit such people as refugees directly from abroad. This would also augment Canada's ability to help those in need of urgent protection in many parts of the world. Interestingly, the government has announced that overall refugee admission levels will be increased in future years, but this is much more a response to the fact that under the new law and visa controls it will be impossible for refugees to reach Canada at all unless they are able to do so through official channels of selection from abroad. Some thought should be given to the notion that, to increase numbers fairly, it might be appropriate to increase the number of Canadian posts abroad at which refugee claims can be made. This will prevent the informal control that currently occurs through the absence of a post, as well as the jeopardizing of lives that occurs as individuals attempt to reach such posts, and will mitigate the very serious effects of visa controls on the ability of individuals to flee persecution. Increasing the number of refugees admitted also acknowledges the role of this class in the more general objective of using immigration to combat the demographic aging of Canada's population.

The precise level of refugee intake is difficult to determine. Canada cannot absorb all of the world's refugees -- but we should aim to do our part. In this respect, two observations can be made. First, there remains considerable scope for more private sponsorships of refugees. The level fell after the Vietnamese exodus, but the need is no less great now. Certainly, Canadians could sponsor many more refugees than they do at present; greater public awareness might contribute to increased use of this solution. Second, in considering this question with respect to the United States, Michael Teitelbaum (the Staff Director of the Select Committee on Population, U.S. House of Representatives, between 1977 and 1979) suggested that the answer lay in agreeing on total future annual levels of immigration, then allowing refugee admissions to form a variable part of this total as necessary. In this way, the United States could respond to an unusual mass exodus by admitting a larger number of refugees and fewer immigrants from other classes that year (Tietelbaum 1980). Such a response would be quick and publicly visible but would not strain the country's ability to absorb immigrants.

Fourth, pressure can be reduced on the existing system by increasing overall immigration levels in the Family and Independent Classes -- or, at least, speeding up the process of family

reunification. This would reduce animosity on the part of those waiting for family members to immigrate toward refugees who have not had to wait for admission to Canada. Moreover, since research indicates that many 'illegal' immigrants seek shelter with relatives in Canada (Robinson 1983, 28), such action would considerably reduce the very activity for which refugee claimants are blamed most. The approach would also enable those who have been unable to gain admission to Canada under family or independent programs in the past to be selected under such programs, thereby reducing the temptation to claim refugee status. The government's recent announcement concerning expanded eligibility for admission under the Family Class is most welcome in this respect, and further such actions must be encouraged. (EIC 1988e).

Fifth, the government should not attempt to reduce what it sees as the current pressure on the inland determination system by introducing amnesty measures, unless it is also prepared to distinguish refugees from those it has admitted in this manner. The matter of amnesty programs (or administrative reviews) has been a vexatious issue for some time, the 1981 Task Force concurring with many other authorities that they tend to act as magnets in attracting additional migrants hoping to benefit from current or future amnesty programs. With visa controls in place, this cannot be a difficulty, but the present recommendation is not based on these assumptions. Rather, the granting of amnesty robs refugees of certain rights that are necessary for their aid and protection (in the extreme case, they are not protected from *refoulement* because they are not admitted as refugees) and may contribute to public suspicion that refugees are economic migrants. In the long run, therefore, even well-intentioned measures may be a disservice to the refugee.

A sixth general recommendation is that there should be a concerted attempt by government authorities to present much more information about refugees. There is a great need for far more public knowledge about the facts and the issues. The public must be made aware of the actual number of refugee claimants arriving in Canada and that refugees have certain rights and are neither illegal nor economic migrants or terrorists. Refugees are not the disadvantage to this country that current coverage of refugee issues seems to indicate. In part, it could be argued that the government's emphasis on the economic value of immigration has been responsible for some of these attitudes, but this could be changed if the cultural benefits of immigration were given more emphasis, or countered by showing that refugees do in fact make considerable economic contributions once they are settled. Thus, a considerable educational effort is required if refugees and their problems are to be understood; it is most disturbing to read media reports that the current government handling of refugee issues has had the opposite effect, encouraging racism and hatred (*The Ottawa Citizen*, June 1988).

These recommendations provide a basis for attacking the present problems, but true reform will not likely be achieved without two more steps. It has been suggested by critics that an intrinsic problem with Canada's refugee system is that it is run according to a 'concept of control'. To escape from this concept and the difficulties it has engendered, it is necessary to break the link between immigration and refugee matters, both conceptually and administratively. It could be argued that refugees cannot be controlled like immigrants without violating their rights and cannot be regarded as migrating through choice as immigrants do. Immigration is a privilege and may be controlled, but refugee status is a right conferred by international law and must be recognized. Conceptual separation of immigration and refugee issues must be achieved and acknowledged in the handling of refugee affairs in this country.

Beyond this, thought should be given to the proposal that refugee admission be taken out of the political sphere altogether. There is no role for political partiality of any kind in determining who shall be helped, and Canada's obligations should be administered fairly. The solution must be

to put refugee matters into the hands of a totally independent Refugee Commission (appointed by Parliament, in consultation with the UNHCR and relevant NGOs) charged with running all of Canada's refugee programs, including overseas admissions and inland determination. It would thus take over tasks performed by EIC, External Affairs, the RSAC and the IAB. Such a commission could receive substantial help from the International Centre for Human Rights and Democratic Development, the UNHCR and NGOs involved with refugee concerns, and might even be part of a broader independent human rights body, which is sorely needed to combat the root causes of refugee movements, as well as other social injustices that occur throughout the world. The creation of such a body would ensure that refugee admission was run fairly, without political let or hindrance, and would thus protect the rights of refugees while ensuring that Canada's legitimate interests were observed.

These recommendations form a set of improvements that, together with those suggested to tackle the international dimensions of the issue, constitute the basis for a comprehensive attack on the problems of the world's refugees and for a solution to Canada's difficulties in approaching their problems.

Endnotes

1. Of course, the refugee -- as a victim of circumstances forced to seek sanctuary in a foreign land -- has been known throughout history, and the term 'refugee' was first used over three hundred years ago to apply to French Huguenots. However, until 1920 there was little concern to delimit the scope of the term. Thereafter, a series of international agreements saw an evolution of the concept in the years up to World War II (The Shorter Oxford English Dictionary 1973, 1980; Cooper 1861, 202; Hathaway 1984, 349-9; Stein 1988). The 1951 response continued the tradition of ad hoc reactions to what were seen as temporary European problems and primarily has to be seen as such. However, the structures and definitions adopted in this year were to have a wider significance, for -- as some far-sighted individuals had noted prior to 1951 -- the refugee phenomenon was to become a permanent one. Just as the refugee problem was being resolved in Europe, other crises were developing elsewhere (Dirks 1977, 189). What had developed as a makeshift response to a temporary European problem was now used as the basis for a more permanent approach on a world scale.

2. The reasons for the choice of criteria in the 1951 Convention were political. The Soviet Union and its allies, enraged at the West's refusal to participate in the repatriation of the East's former nationals, withdrew from the relevant United Nations debates. Thus, discussions on refugee issues became solely a Western concern. The West therefore was able to legitimate its refusal to repatriate by developing the principle of *non-refoulement* (which had featured little in previous refugee agreements) and by using an approach to refugee definition that ignored economic concerns but extended relief to those who were unable or unwilling to adapt to the ideologies of their own countries and for whom continued residence there was intolerable (Dirks 1977, 177; Goodwin-Gill 1983, 69-73; Hathaway 1984, 380; 1988b).

3. It is worth noting that Palestinian refugees in the Middle East are not covered by the UNHCR if they remain within that region. They fall under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) by virtue of the United Nations General Assembly resolution 302 (IV) of 8 December 1949 (UNHCR December 1987, 25). This mandate has been extended to 30 June 1990 and covers UNRWA's 2.1 million "registered refugees" in Jordan, the West Bank, Gaza, Lebanon and Syria (UNRWA 1987, 2).

4. The experts divided the causes of new massive flows of refugees into "man-made causes and factors" and "natural causes". Under the former category, they noted as "political causes" the importance of violations of human rights, oppressive régimes (often segregationist and racially supremacist), colonialism and armed conflict. As "socio-economic factors" they noted the role of underdevelopment (often resulting from colonialism) and the influence of the world economy as causes of refugee movements. Under the category of "natural causes", they observed that flood, drought, soil erosion or desertification can directly or indirectly threaten the lives and security of a people (such as in the Sahel). Moreover, they noted that the effects of such natural disasters were more likely to produce refugee movements in developing countries than in developed nations because the former lacked the economic resources, infrastructure and medical services necessary to cope with such crises. The group stressed that any, or a combination, of these causes could lead to

massive flows of refugees (United Nations 1986, paragraphs 30-44). Of particular interest in the report is the inclusion of such natural factors because the 1951 Convention definition of 'refugee' does not recognize their role and, as a result, many have sought to exclude those fleeing such crises from the benefits of refugee status.

5. The importance of reliable statistics on world refugee populations cannot be over-emphasized. However, the best available data have many limitations. Principal among these is the fact that the data most generally available are supplied by the governments of asylum and therefore cannot be considered totally without bias or completely up to date. Definitional differences over the term 'refugee' mean that it is difficult to compare different data sets, and the limited official definitions of the term mean that all data must underestimate the real size of refugee populations (USCR 1983, 60-61; 1988, 30; Kosinski 1988). As a result, the true size of such populations is probably unknowable, and all statistics must be analysed in the light of such a caveat.

6. The UNHCR includes in its data all refugees (of whom the UNHCR assists some) reported to it by asylum countries, even if the countries' definition is different from that of the UNHCR (in Africa, for example, the OAU definition is used). It should be noted that the UNHCR data do not distinguish between refugees in need and those who have been resettled. The USCR, a non-governmental and independent body, separates refugees into two categories: refugees that are "in need of protection and/or assistance", and refugees who have been resettled since 1975. In collecting such data, USCR relies on responsible sources in each country (USCR 1987, 7-8; 1988, 30; UNHCR 1987a, 24-25). Both sources are relied on extensively by Canada's Employment and Immigration Commission in the preparation of its annual refugee reports.

7. RSAC's role is more fully described in Section 6. It is important to note here that the removal from RSAC's jurisdiction of all those affected by the Administrative Review and the B-1 list on 21 May 1986 reduced the numbers under RSAC's consideration by some 37,000 between 1986 and 1987. The removal of those on the B-1 list removed the cases most likely to be accepted by RSAC, and therefore the Committee's acceptance rates fell precipitously. In fact rates fell more steeply because one short-term result of the announcement of the Administrative Review was for RSAC's acceptance rates to increase sharply for a brief period. This was because the Committee was concerned about the implications for refugees if they were admitted under the Review and because there was a five-month delay before it was implemented. RSAC thus departed, in the period May-September 1986, from its usual practice of dealing with claims in the order they were received, to processing cases in its backlog that were felt to be the most deserving of its attention. For this reason, RSAC's acceptance rates increased for these months before falling steeply thereafter. The abolition of the B-1 list in February 1987 led to a subsequent increase in cases considered by RSAC and in its acceptance rates. Only in its last year (1987-88) was RSAC once again able to consider all incoming claims, and its acceptance rates reflected this (telephone interview, Joseph Stern, Chairman, RSAC, April 1988).

8. It should be noted that the hospitality and settlement opportunities accorded the Afghans have not been extended to Iranians seeking asylum. In 1986 a government spokesman announced that because Iran-Pakistan ties are close, Pakistan would not grant asylum to any Iranian national. As many as 20,000 Iranians live in exile in Pakistan but are not officially registered as refugees. Until recently their presence has been ignored by the government

despite the fact they are technically illegal aliens; they have not been repatriated or placed in camps. In 1987 there was violence in Pakistan between Iranian Revolutionary Guards and anti-Khomeini exiles. The violence led to calls within Pakistan for the expulsion of the anti-Khomeini exiles, but the Pakistani government has yet to act on these demands. The Iranians are expected to leave Pakistan to seek asylum in third countries (USCR 1987, 69; 1988, 73).

9. International response to the Indochinese refugee crisis between 1979 and 1981 resulted in most of the initial refugee influx to Thailand being resettled by late 1982 or early 1983 (Nakavachara and Rogge 1987, 276). However, as the resettlement rate declined and a high rate of natural increase in the refugee population was sustained, Thailand's concern to reduce the 'residual' refugee population grew. By 1987 the prospects for those remaining in camps grew more bleak. Thai officials report that in terms of prospects for resettlement "we are now heading towards the bottom of the barrel" (cited in *Refugees* September 1987, 20). Even if there were a 100 per cent acceptance rate of those few who are being interviewed by embassies, thousands would remain. There are a growing number of 'longstayers' in the camps; more than half the residual refugee population in Thailand has been in camps for more than four years. Many of these have already been rejected for resettlement two or three times (*Refugees* September 1987, 20).

10. It is worth noting that during the period 1979 to 1981, there was a sudden increase in the number of asylum applications in European countries. The European Consultation on Refugees and Exiles has stressed that this increase was not made up of people who were seeking to enter a European country for the first time. Rather, a high proportion of asylum applications were from people who did not wish to leave Europe after long periods of residence (for example, the guest-worker Turks in West Germany). A second major group of asylum applicants consisted of students from countries that had suddenly experienced a state of turmoil. Iranian students living in the United Kingdom were a prominent example (European Consultation on Refugees and Exiles 1985).

11. Refugees are defined as Convention refugees and members of the Designated Classes; humanitarian programs include the Special Program landings and Special Review Committee Approvals.

12. Space does not allow the amplification of the point here, but it is important to recognize that the work of the UNHCR has not been without its critics, some arguing that more heed should be taken of refugees' opinions in seeking solutions to their problems, and of the limitations of 'imposing' aid upon refugees by international agencies (Rogge 1985, 175-7; Harrell-Bond 1986, 358-366).

13. This approximation ignores the fact that some people landed under the Special Programs were present in Canada prior to landing.

14. It is fair to add here that Grey believes the *Singh* finding with respect to creating a constitutional right to apply for refugee status may have to be clearly established by a court challenge; that while Canadian procedures concerning refugee determination may be satisfactory, the definition used is not; and that one disquieting procedural element remains (this concerns the current tightening of regulations with respect to work permits which enable claimants to support themselves while their claims are being determined) (Grey 1988).

15. It is worth noting that those landed under humanitarian programs are also included among the Other Independents.

16. Table 6 records some data for the period April 1986 to March 1987 because these claims were received before the fast track was implemented.

17. Since February 1987, the Special Measures Programs have focused entirely on the overseas processing of relatives of Canadians affected by events in the relevant countries. Before this date, the Programs had also incorporated the ability to allow those already physically present in Canada to remain in this country. This aspect was eliminated because it was felt to be redundant under Bill C-55, which will enable an expedited process for all refugee claimants (Hathaway 1988a).

Annex 1 Selected Articles from the 1951 Convention Relating to the Status of Refugees

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Article 1
Definition of the term "Refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951" or
(b) "events occurring in Europe or elsewhere before 1 January 1951"

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of Section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 28
Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 31
Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32
Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33
Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return *("refouler")* a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

CHAPTER VI
EXECUTORY AND TRANSITORY PROVISIONS

Article 35
Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

   (a) the condition of refugees,
   (b) the implementation of this Convention, and
   (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Source: UN 1983, 11-14, 22-25.

ANNEX 2 UNHCR Anual Refugee Statistics, 1984-1987, By Country of Asylum

	Number of refugees in thousands			
	1984	1985	1986	1987
NORTH AMERICA				
Canada	353.0	353.0	353.0	353.0
United States of America	1,000.0	1,000.0	1,000.0	1,000.0
Total	**1,353.0**	**1,353.0**	**1,353.0**	**1,353.0**
LATIN AMERICA AND THE CARIBBEAN				
Belize	7.0	3.0	9.0	9.0
Cuba	2.0	2.0	2.0	2.0
Nicaragua	18.5	18.5	17.3	8.2
Costa Rica	16.9	16.8	24.0	31.2
Dominican Republic	5.0	6.0	6.0	6.0
Mexico	160.0	175.0	175.0	175.0
Guatemala	70.0	70.0	12.0	12.0
Honduras	39.5	47.8	60.0	68.0
Panama	1.5	1.1	1.1	1.2
Ecuador	0.8	0.9	0.9	0.8
Venezuela	1.1	1.4	1.9	1.8
Peru	0.6	0.6	0.7	0.6
Brazil	5.4	5.3	5.3	5.3
Argentina	11.5	11.5	14.0	14.0
Chile	2.5	2.5	--	--
Total	**342.3**	**362.4**	**329.2**	**335.1**
AFRICA				
Morocco	0.5	0.8	0.8	0.8
Algeria	167.0	167.0	167.0	167.0
Senegal	5.2	5.2	5.5	5.5
Ivory Coast	--	0.6	0.8	0.9
Togo	1.5	1.8	2.0	2.6
Benin	--	0.8	3.7	3.7
Nigeria	4.6	4.7	4.9	4.7
Cameroun	4.2	13.7	35.2	53.6
Central African Republic	7.0	42.0	29.9	13.0
Zaire	303.5	317.0	283.0	301.0
Congo	--	1.0	1.2	1.2
Angola	96.2	92.0	91.5	92.2
Zambia	103.0	96.5	103.6	138.3
Botswana	4.1	5.0	5.5	4.6
Zimbabwe	46.4	46.5	62.8	65.2
Lesotho	11.5	11.5	11.5	11.5

	Number of refugees in thousands			
	1984	1985	1986	1987
Egypt	5.5	5.5	1.1	1.1
Dijbouti	23.0	16.7*	17.0	16.7
Somalia	700.0	700.0*	700.0*	700.0
Ethiopia	31.4	59.6	85.7*	132.4
Sudan	690.0	690.0*	1,164.0	974.0
Kenya	6.8	8.0	8.8	8.0
Uganda	133.0	151.0	151.0	144.0
Tanzania	180.0	179.0	212.9	220.3
Rwanda	49.0	49.0	19.0	19.4
Burundi	256.3	256.3	267.5	267.5
Mozambique	0.6	0.8	0.7	0.7
Swaziland	7.0	8.0	10.7	12.1
Malawi	--	--	--	100.0
Total	**2,837.3**	**2,930.0**	**3,447.3**	**3,462.0**
EUROPE				
Finland	--	0.5	0.5	0.5
Sweden	43.0	90.6	90.6	120.0
Norway	10.0	10.0	11.8	13.2
Denmark	3.6	8.5	8.5	23.0
Netherlands	14.5	15.0	15.5	16.0
Belgium	35.0	36.4	36.6	35.9
United Kingdom	140.0	135.0	135.0	100.0
Ireland	--	0.5	0.6	0.6
France	161.2	167.3	174.2	180.3
Spain	23.7	9.9	9.3	10.2
Portugal	0.7	0.6	0.7	0.8
Germany (F.R.)	115.0	126.6	134.0	140.3
Switzerland	32.3	31.2	30.6	30.1
Austria	21.0	20.5	20.0	18.5
Italy	14.2	15.1	15.2	15.5
Yugoslavia	1.7	1.6	1.5	1.4
Romania	1.0	1.0	--	--
Greece	4.0	4.1	3.6	3.3
Turkey	1.5	2.6	1.8	1.9
Total	**622.4**	**677.0**	**690.0**	**711.5**

	Number of refugees in thousands			
	1984	1985	1986	1987
EAST ASIA AND THE PACIFIC				
Japan	2.1	1.5	1.0	0.9
China	276.6	179.8	279.8	285.5
Hong Kong	12.8	11.9	9.4	8.0
Macau	0.8	0.7	0.7	0.6
Viet Nam (Socialist Republic)	21.0	21.0	25.0	25.0
Laos (People's Democratic Republic)	1.2	1.2	--	--
Philippines	2.4	2.2	7.0	2.9
Philippines Ref. Proc. Centre	16.5	12.9	9.9	10.8
Thailand	133.0	128.5	130.4	119.9
Malaysia	100.7	99.0	99.7	99.0
Indonesia	6.1	6.7	6.6	3.9
Indonesia Ref. Proc. Centre	--	4.1	2.8	1.7
Papua New Guinea	--	10.9	10.5	10.1
Australia	317.0	89.0	89.0	85.9
New Zealand	10.6	4.5	4.6	4.4
Total	**904.9**	**572.6**	**675.3**	**657.1**
MIDDLE EAST AND SOUTH ASIA				
Lebanon	2.9	2.9	5.4	5.9
Iran (Islamic Republic)	1,800.0	1,900.0	2,300.0	2,600.0
Pakistan	2,900.0	2,500.0	2,702.5	2,882.0
India	6.9	7.2	136.7	136.4
Yemen (Arab Republic)	--	--	5.0	75.0
Total	**4,709.8**	**4,410.1**	**5,149.6**	**5,699.3**
UNSPECIFIED SOURCES (a)	--	101.0	99.0	--
TOTAL WORLD (b)	**10,769.7**	**10,406.1**	**11,743.4**	**12,218.0**

Ref. Proc. Centre: Refugee Processing Centre.

NOTES:

* Not including persons assisted under the UNHCR Special Appeal for Emergency Needs in Africa.

NOTES (cont'd):

a. Other countries in Africa, Western Asia, Eastern Asia (including Singapore) and Latin America. Not tabulated in 1984 or 1987.

b. These figures do not include Palestine refugees under the mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), by virtue of the United Nations General Assembly resolution 302 (IV) of 8 December 1949.

The figures are provided mostly by governments based on their own records and methods of estimation and are rounded up to the nearest hundred or thousand where appropriate. Countries with fewer than 500 refugees are not listed. All figures are for 1 January of each year.

Source: UNHCR 1984, 24-25; 1985b, 24-25; 1986, 24-25; 1987a, 24-25.

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TABLE 1: Canada's Refugee and Humanitarian Programs, 1982-1987, by region

Region	Year	Refugee Admissions[a] Govt.-Sponsored	Refugee Admissions[a] Privately Funded	Special Program Landings[b]	Refugee Claims in Canada Landings[c]	Special Review Cttee.[d]	Total
Eastern Europe	1982	6,054	3,258	3,302	68		12,682
	1983	2,649	1,558	2,893	67	164	7,331
	1984	2,641	909	2,217	63	121	5,951
	1985	2,517	1,288	761	46	123	4,735
	1986	3,404	1,952	192	20	87	5,655
	1987*	3,713	2,912	-	19	121	6,765
	Total	**20,978**	**11,877**	**9,365**	**283**	**616**	**43,119**
Southeast Asia[e]	1982	4,091	1,202	-	86		5,379
	1983	3,013	1,647	-	12	8	4,680
	1984	3,749	2,090	-	10	16	5,865
	1985	4,406	1,703	-	6	3	6,118
	1986	3,931	2,059	-	11	5	6,006
	1987*	2,995	2,698	-	3	9	5,705
	Total	**22,185**	**11,399**	**-**	**128**	**41**	**33,753**
Middle East[f]	1982	61	196	506	61		824
	1983	296	388	621	100	-	1,405
	1984	584	368	1,631	79	-	2,662
	1985	440	283	1,363	328	-	2,414
	1986	305	342	1,636	418	-	2,701
	1987*	520	345	1,906	270	3	3,044
	Total	**2,206**	**1,922**	**7,663**	**1,256**	**3**	**13,050**
Latin America	1982	732	47	1,499	418		2,696
	1983	2,164	139	690	348	20	3,361
	1984	2,545	241	478	580	30	3,874
	1985	3,133	247	665	401	13	4,459
	1986	3,422	232	704	377	-	4,735
	1987*	3,688	273	408	342	26	4,737
	Total	**15,684**	**1,179**	**4,444**	**2,466**	**89**	**23,862**
Africa	1982	288	84	-	22		394
	1983	653	170	-	64	-	887
	1984	861	177	-	69	-	1,107
	1985	786	171	-	90	-	1,047
	1986	846	318	-	83	-	1,247
	1987*	795	473	-	109	-	1,377
	Total	**4,229**	**1,393**	**-**	**437**	**-**	**6,059**

TABLE 1 (con't)

Others[f]	1982	126	72	-	42	-	240
	1983	166	174	32	35	-	407
	1984	167	108	880	159	-	1,314
	1985	277	103	407	325	-	1,112
	1986	238	161	262	503	-	1,164
	1987*	512	307	292	699	-	1,810
	Total	**1,486**	**925**	**1,873**	**1,763**	**-**	**6,047**
Total	**1982-1987**	**66,768**	**28,695**	**23,345**	**6,333**	**749**	**125,890**

NOTES:

a. Includes persons arriving at ports of entry with immigrant visas and, where known, those processed abroad on an emergency basis (who enter on the strength of a Minister's Permit, and who are not granted permanent residence ('landing') until full compliance with the 1976 Act and the Regulations is demonstrated).

b. Persons who were neither Convention refugees nor Designated Class immigrants, but who were assisted under the special humanitarian programs for El Salvador, Poland, Lebanon, Iran, Sri Lanka and, from 1984, Guatemala.

c. Persons who were found to be Convention refugees under the provisions of the refugee determination process in Canada and who were subsequently granted permanent residence.

d. Special Review Committee Approvals: persons from countries benefitting from Canada's humanitarian programs who were permitted to apply for permanent residence in Canada without undergoing a refugee determination.

e. In 1982, and from 1986, this category is called 'Indochina'.

f. From 1985, data for Afghanistan were moved from the category 'Others' and placed in the category 'Middle East' which then became known as 'West Asia'. However, in order to ensure consistency in this table, Afghanistan's data have been included in the category 'Others' for the whole period 1982 to 1987. In 1987, Afghanistan's data were distributed as follows: government-sponsored admissions, 372; privately-sponsored admissions, 216; and refugee claims in Canada landings, 174.

* 1987 data are preliminary.

Sources: Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division, 1983, 4; 1984, 37; 1985, 34; 1986, 60; 1987a; 1987b, 40; unpublished preliminary data for 1987 provided by David White, Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division, 1 March 1988.

TABLE 2: Total Refugee Admissions from Abroad, By Source Country, 1986

Country of Last Permanent Residence	Refugee Admissions from Abroad (a)		Special Program Landings (b)		Total (c)	
	No.	%	No.	%	No.	%
EASTERN EUROPE						
Poland	3,591	20.86	192	6.87	3,783	18.91
Czechoslovakia	684	3.97	-	-	684	3.42
Hungary	543	3.15	-	-	543	2.71
Romania	438	2.54	-	-	438	2.19
U.S.S.R.	40	0.23	-	-	40	0.20
Others	60	0.35	-	-	60	0.30
Total	**5,356**	**31.12**	**192**	**6.87**	**5,548**	**27.73**
SOUTHEAST ASIA						
Vietnam	3,680	21.38	-	-	3,680	18.39
Kampuchea	1,641	9.53	-	-	1,641	8.20
Laos	602	3.50	-	-	602	3.01
Others	67	0.39	-	-	67	0.33
Total	**5,990**	**34.80**	**-**	**-**	**5,990**	**29.94**
LATIN AMERICA						
Chile	183	1.06	-	-	183	0.91
Argentina	3	0.02	-	-	3	0.01
Others	9	0.05	-	-	9	0.04
South America	**195**	**1.13**	**-**	**-**	**195**	**0.97**
El Salvador	2,186	12.70	230	8.23	2,416	12.08
Guatemala	537	3.12	474	16.96	1,011	5.05
Nicaragua	646	3.75	-	-	646	3.23
Others	58	0.34	-	-	58	0.29
Central America	**3,427**	**19.91**	**704**	**25.20**	**4,131**	**20.65**
Cuba	30	0.17	-	-	30	0.15
Haiti	2	0.01	-	-	2	0.01
Others	-	-	-	-	-	-
Caribbean	**32**	**0.18**	**-**	**-**	**32**	**0.16**
Total	**3,654**	**21.22**	**704**	**25.20**	**4,358**	**21.78**
MIDDLE EAST						
Afghanistan	302	1.75	-	-	302	1.51
Iran	450	2.61	469	16.79	919	4.59
Iraq	125	0.73	-	-	125	0.62
Lebanon	22	0.13	1,167	41.77	1,189	5.94
Others	50	0.29	-	-	50	0.25
Total	**949**	**5.51**	**1,636**	**58.55**	**2,585**	**12.92**

AFRICA						
Ethiopia	876	5.09	-	-	876	4.38
Uganda	49	0.28	-	-	49	0.24
Sudan	18	0.10	-	-	18	0.09
Nigeria	1	*	-	-	1	*
South Africa	51	0.30	-	-	51	0.25
Others	169	0.98	-	-	169	0.84
Total	**1,164**	**6.76**	**-**	**-**	**1,164**	**5.82**
OTHERS						
Sri Lanka	26	0.15	262	9.37	288	1.44
Others	74	0.43	-	-	74	0.37
Total	**100**	**0.58**	**262**	**9.37**	**362**	**1.81**
TOTAL	**17,213**	**100.00**	**2,794**	**100.00**	**20,007**	**100.00**

NOTES:

a. Includes those arriving at ports of entry with immigrant visas and, where known, those processed abroad on an emergency basis who enter on the strength of a Minister's Permit pending landing after full compliance with the 1976 Act and Regulations is demonstrated.

b. Persons who were neither Convention refugees nor Designated Class immigrants, but who were assisted under the special humanitarian programs for El Salvador, Poland, Lebanon, Iran, Sri Lanka, and Guatemala.

c. Total Refugee Admissions from abroad and Special Program Landings.

* Percentage too small for tabulation.

Due to rounding, sub-totals may not sum to exactly 100 per cent.

Source: Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division 1987b, 42-43.

Table 3: Government-sponsored Refugee Allocations: Planned and Actual Numbers 1982-1987, By Region (Convention Refugee and Designated Classes)

Region		1982	1983	1984	1985	1986	1987*
Southeast Asia	GF	4,000	3,000	3,000	3,700	3,200	3,200
	RA	4,091	3,013	3,749	4,406	3,931	2,995
		+91	+13	+749	+706	+731	-205
Eastern Europe	GF	6,000	3,000	2,300	2,200	3,100	3,100
	RA	6,054	2,649	2,641	2,517	3,404	3,713
		+54	-351	+341	+317	+304	+613
Latin America	GF	1,000	2,000	2,500	3,000	3,200	3,200
	RA	732	2,164	2,545	3,133	3,422	3,688
		-268	+164	+45	+133	+222	+488
Africa	GF	500	1,000	1,000	1,000	1,000	1,000
	RA	288	653	861	786	846	795
		-212	-347	-139	-214	-154	-205
Middle East	GF	400	800	800	800	900	1,200 (a)
	RA	61	296	584	440	305	1,032
		-339	-504	-216	-360	-595	-168
Other	GF	100	200	400	200	300	- (a)
	RA	126	166	167	277	238	-
		+26	-34	-233	+77	-62	-
Totals (b)	**GF**	**12,000**	**10,000**	**10,000**	**10,900**	**11,700**	**11,700**
	RA	**11,352**	**8,941**	**10,547**	**11,559**	**12,146**	**12,223**
		-648	**-1,059**	**+547**	**+659**	**+446**	**+523**

GF — Government-sponsored refugee allocations.

RA — Actual number of government-sponsored refugee admissions.

Notes:

* 1987 data are provisional.

a. The transfer of Afghanistan from 'Other' to 'Middle East/West Asia' means that 1987 totals cannot be compared with previous years. For the purposes of calculation 'Other' and 'Middle East/West Asia' have been combined in 1987.

b. To these totals can be added unfunded allocations of 2,000 (1982), 2,000 (1983), 2,000 (1984); and funded reserve allocations of 100 (1985), 300 (1986), 300 (1987).

Sources: Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division 1986, 58; 1987b, 38; unpublished preliminary data for 1987 provided by David White, Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division, 1 March 1988.

Table 4: Incoming Claims (Non-Fast Track and Fast Track) 1978-1988: Totals

Year (a)	Regular Claims Received	Montreal O.H. Claims	Toronto O.H. Claims	Vancouver O.H. Claims	Total Claims Received
Apr. 1978-Dec. 1978	685				685
Jan. 1979-Dec. 1979	1,165				1,165
Jan. 1980-Dec. 1980	1,505				1,505
Jan. 1981-Dec. 1981	2,592				2,592
Jan. 1982-Dec. 1982	3,441				3,441
Jan. 1983-Mar. 1984	4,509	332	146		4,987
Apr. 1984-Mar. 1985	4,439	421	241		5,101
Apr. 1985-Mar. 1986	3,276	295	393		3,964
Apr. 1986-Mar. 1987 (Non - Fast Track)	509	160	209		878
21 May 1986-Mar. 1987 (Fast Track) (b)	5,865	519	105	6	6,495
Apr. 1987-Feb. 1988 (Fast Track) (c)	n.a.	n.a.	n.a.	n.a.	15,805
Total					**46,618**

O.H. Oral Hearings Pilot Project implemented in May 1983.

Notes:

a. Not all time periods are 12 months in duration.

b. The 'Fast Track' process was implemented on 21 May 1986.

c. Data not fully available. Figures up to October 1987 are 10,782; 286; 302; 131; 10,063 respectively.

Source: Refugee Status Advisory Committee, unpublished data.

Table 5: Refugee Claims in Canada: Claims Received by the Refugee Status Advisory Committee, 1981-1986, By Country

Country	1981	1982	1983	1984	1985	1986	Total	%
Guyana	98	211	619	1,426	1,177	237	3,768	15.8
India	1,047	1,303	359	148	134	270	3,261	13.8
Sri Lanka (a)(b)(d)	--	64	314	716	576	250	1,920	8.1
Iran (a)(b)(d)	95	156	194	743	447	249	1,884	7.9
El Salvador (a)(b)(c)(d)	129	95	145	222	292	147	1,030	4.3
Jamaica	55	94	148	248	306	89	940	4.0
Portugal	--	--	--	--	22	738	760	3.2
Haiti (d)	48	102	128	66	114	278	736	3.1
Bangladesh	--	--	210	404	66	20	700	3.0
Guatemala (a)(b)(c)(d)	56	272	187	76	43	44	678	2.9
Ghana	--	--	--	20	63	534	617	2.6
Afghanistan (b)(d)	--	--	101	260	124	125	610	2.6
Poland (a)(c)(d)	172	56	21	47	126	179	601	2.5
Chile (c)(d)	95	53	44	54	171	156	573	2.4
Peru	66	94	109	72	105	53	499	2.1
Dominican Republic	42	71	59	63	108	31	374	1.6
Turkey	69	69	37	21	25	34	255	1.1
Uruguay (c)	33	27	36	57	74	20	247	1.0
Iraq (d)	26	50	63	54	28	23	244	1.0
Ethiopia (d)	57	30	26	16	27	66	222	0.9
Czechoslovakia (b)(d)	56	96	29	11	6	6	204	0.9
Lebanon (a)(b)(d)	56	46	7	13	16	8	146	0.6
Others	392	552	722	412	567	788	3,433	14.5
Total	**2,592**	**3,441**	**3,558**	**5,149**	**4,617**	**4,345**	**23,702**	**100.0**

Notes:

a. Countries included in the Special Programs.

b. On the B-1 list.

c. Countries included in the Designated Classes schedules.

d. Major sources of refugees admitted from abroad by Canada.

Source: Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division 1987b, 40.

Table 6: Incoming Claims (Non-Fast Track): Top Ten Source Countries and Totals (a)

January - December 1981			January - December 1982			January 1983 - March 1984		
	Claims	%		Claims	%		Claims	%
India	1,047	40.3	India	1,303	37.9	Guyana	1,039	20.8
Poland	172	6.6	Guatemala	272	7.9	Sri Lanka	538	10.9
El Salvador	129	5.0	Guyana	211	6.1	India	430	8.6
Guyana	98	3.8	Iran	156	4.5	Bangladesh	398	8.0
Chile	95	3.7	Haiti	102	3.0	Iran	392	7.9
Iran	95	3.7	Czechoslovakia	96	2.8	Guatemala	245	4.9
Turkey	69	2.7	El Salvador	95	2.8	Jamaica	245	4.9
Peru	66	2.5	Jamaica	94	2.7	El Salvador	214	4.3
Ethiopia	57	2.2	Peru	94	2.7	Haiti	156	3.1
Lebanon	56	2.2	Dominican Rep.	71	2.1	Peru	146	2.9
Sub-total	1,884	72.7		2,494	72.4		3,803	76.3
Other	708	27.3		947	27.5		1,184	23.7
Total	**2,592**	**100.0**		**3,441**	**100.0**		**4,987**	**100.0**

April 1984 - March 1985			April 1985 - March 1986			April 1986 - March 1987 (b)		
Guyana	1,047	20.5	Guyana	849	21.4	Sri Lanka	175	19.9
Iran	172	3.4	Sri Lanka	505	12.7	Iran	135	15.4
Sri Lanka	129	2.5	Iran	399	10.1	Guyana	85	9.7
Afghanistan	98	1.9	El Salvador	277	7.0	El Salvador	76	8.7
Jamaica	95	1.9	Jamaica	257	6.5	Poland	72	8.2
Bangladesh	95	1.9	Chile	174	4.4	Chile	68	7.7
El Salvador	69	1.4	Afghanistan	152	3.8	Afghanistan	56	6.4
India	66	1.3	Poland	147	3.7	Ghana	37	4.2
Haiti	57	1.1	India	133	3.4	Portugal	29	3.3
Chile	56	1.1	Dominican Rep.	102	2.6	India	28	3.2
Sub-total	1,884	36.9		2,995	75.6		761	86.7
Other	3,217	63.1		969	24.4		117	13.3
Total	**5,101**	**100.0**		**3,964**	**100.0**		**878**	**100.0**

Notes:
a. Not all time periods are 12 months in duration.
b. The 'Fast Track' process was implemented on 21 May 1986.

Source: Refugee Status Advisory Committee, unpublished data.

Table 7: Acceptances: Top Ten Source Countries and Totals, 1980-1988

January 1, 1980 - December 31, 1980

	Accepted	%
Chile	143	54.37
Argentina	17	6.46
Cuba	15	5.70
Uruguay	10	3.80
Ethiopia	8	3.04
Iran	8	3.04
Vietnam	8	3.04
Czechoslovakia	7	2.66
Poland	7	2.66
Haiti	5	1.90
Sub-total	228	86.69
Other	35	13.31
Total Accepted	263	100.00
Total Claims Processed	1,003	

January 1, 1981 - December 31, 1981

	Accepted	%
Iran	68	16.71
Chile	63	15.48
El Salvador	57	14.00
Cuba	38	9.34
Argentina	26	6.39
Uruguay	20	4.91
Ethiopia	19	4.67
Czechoslovakia	19	4.67
Afghanistan	15	3.69
Guatemala	11	2.70
Sub-total	336	82.56
Other	71	17.44
Total Accepted	407	100.00
Total Claims Processed	2,080	

January 1, 1982 - December 31, 1982

	Accepted	%
Iran	83	14.26
Guatemala	80	13.75
Poland	59	10.14
Cuba	45	7.73
Chile	44	7.56
Ethiopia	39	6.70
Uruguay	24	4.12
Czechoslovakia	20	3.44
El Salvador	19	3.26
Haiti (a)	18	3.09
Sub-total	431	74.05
Other	151	25.95
Total Accepted	582	100.00
Total Claims Processed	2,851	

January 1, 1983 - March 31, 1984

	Accepted	%
Iran	220	17.60
Guatemala	188	15.04
Afghanistan	104	8.32
Sri Lanka	89	7.12
El Salvador	73	5.84
Iraq	60	4.80
Guyana	59	4.72
Bangladesh	40	3.20
Ethiopia	38	3.04
Chile	35	2.80
Sub-total	906	72.48
Other	344	27.52
Total Accepted	1,250	100.00
Total Claims Processed	3,559	

Table 7: Acceptances: Top Ten Source Countries and Totals, 1980-1988 (continued)

April 1, 1984-March 31, 1985

	Accepted	%
Iran	459	37.72
Afghanistan	189	15.53
Sri Lanka	144	11.83
Guyana	93	7.64
Iraq	44	3.62
El Salvador	41	3.37
Chile	40	3.29
Ethiopia	28	2.30
Uruguay	17	1.40
Bangladesh	15	1.23
Sub-total	1,070	87.92
Other	147	12.08
Total Accepted	1,217	100.00
Total Claims Processed	3,709	

April 1, 1985-March 31, 1986

	Accepted	%
Iran	269	25.77
Sri Lanka	252	24.14
Afghanistan	150	14.37
Guyana	89	8.52
Chile	82	7.85
El Salvador	34	3.26
Iraq	19	1.82
Uruguay	14	1.34
China	10	0.96
Peru (b)	9	0.86
Sub-total	928	88.89
Other	116	11.11
Total Accepted	1,044	100.00
Total Claims Processed	4,017	

April 1, 1986 - March 31, 1987 (Not Fast Track)

	Accepted	%
Sri Lanka	477	47.70
Iran	216	21.60
Afghanistan	88	8.80
Chile	57	5.70
Guyana	26	2.60
El Salvador	25	2.50
Ethiopia	20	2.00
Iraq	18	1.80
Somalia	10	1.00
Ghana	10	1.00
Sub-total	947	94.70
Other	53	5.30
Total Accepted	1,000	100.00
Total Claims Processed	1,936	

May 21, 1986 - March 31, 1987 (Fast Track) (c)

	Accepted	%
Somalia	97	29.57
Ethiopia	53	16.16
Chile	45	13.72
Pakistan	19	5.79
Ghana	16	4.88
Iraq	15	4.57
Iran	12	3.66
Bolivia	10	3.05
Nicaragua	9	2.74
Sri Lanka	8	2.44
Sub-total	284	86.59
Other	44	13.41
Total Accepted	328	100.00
Total Claims Processed	3,278	

Table 7: Acceptances: Top Ten Source Countries and Totals, 1980-1988 (continued)

April 1, 1987 - February 29, 1988
(Fast Track)

	Accepted	%
Chile	396	32.89
Somalia	260	21.59
Ethiopia	159	13.21
Iran	76	6.31
Sri Lanka	74	6.15
Pakistan	35	2.91
El Salvador	28	2.33
Iraq	23	1.91
Ghana	18	1.50
S. Africa	16	1.32
Sub-total	1,085	90.12
Other	119	9.88
Total Accepted	1,204	100.00
Total Claims Processed	5,545	

Notes:

a. Turkey also recorded 18 acceptances in 1982.

b. Poland also recorded 9 acceptances in 1985-86.

c. The 'Fast Track' process was implemented on 21 May 1986.

d. Not all time periods are 12 months in duration.

Source: Refugee Status Advisory Committee, unpublished data.

Table 8: Special Refugee and Humanitarian Movements, 1947-1980

Year	Movement	No. of Refugees
1947-1957	Post-War European Movement	186,150
1956 & 1957	Hungarian Movement	37,149
1968 & 1969	Czechoslovakian Movement	11,943
1970	Tibetan Movement	228
1972 & 1973	Ugandan Asian Movement	7,069
1973-1979	Special South American Program	7,016
1975	Cypriot Special Program	700
1975-1978	Special Vietnamese/Cambodian Program	9,060
1976	Iraqi Kurdish Movement	98
1976 & 1977	Angola/Mozambique Returnees	2,100
1976-1979	Lebanese Special Program	11,321
1978	Argentinian Political Prisoner Program	9
1979 & 1980	Indochinese Refugee Program	60,049 (a)
TOTAL		**332,892**

Note:
(a) Separate totals for 1979 and 1980 Indochinese refugee intake sum to 60,069 (EIC, 1982, 32).

Source: EIC 1982, 32.

Table 9: Canada's Refugee and Humanitarian Programs, 1979-1987, by annual totals

	Year	Refugee Admissions[a] Gov't. Sponsored	Refugee Admissions[a] Privately Funded	Special Program Landings[b]	Refugee Claims in Canada Landings[c]	Special Review Cttee.[d]	Total
	1979	13,730	13,781				27,879[e]
	1980	19,237	21,111				40,348
	1981	10,592	4,387				14,979
Total, 1979-1981		**43,559**	**39,279**				**83,206**
	1982	11,352	4,859	5,307	697		22,215
	1983	8,941	4,076	4,236	626	192	18,071
	1984	10,547	3,893	5,206	960	167	20,773
Total, 1982-1984		**30,840**	**12,828**	**14,749**	**2,283**	**359**	**61,059**
	1985	11,559	3,795	3,196	1,196	139	19,885
	1986	12,146	5,064	2,794	1,412	92	21,508
	1987	12,223	7,008	2,606	1,442	159	23,438
Total, 1985-1987		**35,928**	**15,867**	**8,596**	**4,050**	**390**	**64,831**
Total, 1979-1987		**110,327**	**67,974**	**23,345**	**6,333**	**749**	**209,096**

Notes:

a. Before 1982 data show landings; after 1982 they show admissions because they include persons arriving at ports of entry with immigrant visas and, where known, those processed aborad on an emergency basis (who enter on the strength of a Minister's Permit, and who are not granted permanent residence ('landing') until full compliance with the 1976 Act and the Regulations is demonstrated).

b. Persons who were neither Convention refugees nor Designated Class immigrants, but who were assisted under the special humanitarian programs for El Salvador, Poland, Lebanon, Iran, Sri Lanka and, from 1984, Guatemala. No Special Program Landings occurred before 1982.

c. Persons who were found to be Convention refugees under the provisions of the refugee determination process in Canada and who were subsequently granted permanent residence. Refugee claims in Canada Landings are included under government- and privately sponsored refugee admissions for 1979 to 1981.

d. Special Review Committee Approvals: persons from countries benefitting from Canada's humanitarian programs who were permitted to apply for permanent residence in Canada without undergoing a refugee determination.

e. The 1976 Immigration Act did not come into force until 1978; this total includes 368 refugees who were processed according to the previous legislation and who, consequently, cannot be distinguished as government or privately-sponsored refugee admissions.

* 1987 data are preliminary.

Sources: Employment and Immigration, Policy and Program Development Branch, Refugee Affairs Division 1983, 4; 1984, 37; 1985, 34; 1986, 60; 1987a; 1987b, 39-40; data for 1979 to 1981 and unpublished preliminary data for 1987 provided by David White, Employment and Immigration, Policy and Program Development Branch, Refugees Affairs Division, 1 March 1988.

Table 10: Total Immigration, by Class and Category, 1980-1987 (Landings)

Class/Category[a]		1980	1981	1982	1983	1984	1985	1986	1987
Family Class	No.	51,039	51,025	49,993	48,713	43,814	38,518	42,197	53,598
	%	35.7	39.7	41.3	54.6	49.7	45.7	42.5	35.2
Assisted Relatives	No.	13,531	17,592	11,948	4,997	8,167	7,396	5,890	12,283
	%	9.5	13.7	9.9	5.6	9.3	8.8	5.9	8.1
Refugee Classes[b]	No.	40,348	14,980	16,927	13,970	15,343	16,760	19,174	21,565
	%	28.2	11.6	14.0	15.7	17.4	19.9	19.3	14.2
Business	No.	5,116	6,028	6,364	6,225	6,260	6,486	7,518	11,069
	%	3.6	4.7	5.3	7.0	7.1	7.7	7.6	7.3
Other Independents	No.	31,549	36,944	33,682	13,178	12,343	13,051	22,634	50,921
	%	22.0	28.7	27.8	14.8	14.0	15.5	22.8	33.5
Retired	No.	1,548	2,063	2,252	2,094	2,313	2,100	1,833	2,662
	%	1.1	1.6	1.9	2.3	2.6	2.5	1.8	1.8
Total	**No.**	**143,133**	**128,632**	**121,166**	**89,177**	**88,239**	**84,311**	**99,246**	**152,098**
	%	**100.0**	**100.0**	**100.0**	***100.0***	***100.0***	***100.0***	***100.0***	***100.0***
Total as % of 1980 level		**100.0**	**89.9**	**84.7**	**62.3**	**61.6**	**58.9**	**69.3**	**106.3**

Notes:

a. Assisted Relatives, Business, Retired and Other Independents are categories of the Independent Immigrant Class.

b. Defined as Convention refugees and members of Designated Classes.

Sources: Employment and Immigration 1986c, Table IM14; 1987f, Table S3; Employment and Immigration, Landed Immigrant Data System, unpublished tabulations for 1985 (2 June 1987); 1986 (19 October 1987, 3 November 1987); 1987 (26 April 1988).

Table 11: Incoming Claims (Fast Track): Top Ten Source Countries and Totals[a]

21 May 1986-March 1987[b]			April 1987-February 1988[b]			Total Fast Track 21 May 1986-February 1988		
	Claims	%		Claims	%		Claims	%
Ghana	1,072	16.5	Chile	1,695	10.7	Ghana	2,233	10.0
Portugal	1,007	15.5	Ghana	1,161	7.3	Chile	2,067	9.3
Turkey	916	14.1	Iran*	1,071	6.8	Turkey	1,922	8.6
Haiti	477	7.3	El Salvador*	1,070	6.8	Portugal	1,915	8.5
India	374	5.8	Turkey	1,006	6.4	Iran*	1,122	5.0
Chile	372	5.7	Sri Lanka*	989	6.3	El Salvador*	1,108	5.0
Somalia	315	4.8	Portugal	908	5.7	Sri Lanka*	1,017	4.6
Pakistan	194	3.0	Honduras	633	4.0	India	903	4.0
Ethiopia	173	2.7	Lebanon*	553	3.5	Haiti	895	4.0
Poland	154	2.4	India	529	3.3	Somalia	843	3.8
Sub-total	5,054	77.8		9,615	60.8		14,025	62.9
Others	1,441	22.2		6,190	39.2		8,275	37.1
Total	**6,495**	**100.0**		**15,805**	**100.0**		**22,300**	**100.0**

Notes:

a. The 'Fast Track' process was implemented on 21 May 1986.

b. The data are divided into 11-month periods for purposes of this table.

* On the B-1 list.

Source: Refugee Status Advisory Committee, unpublished data.